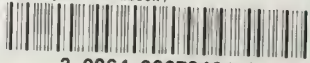


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Chapter 2

Elementary & Secondary Education Act

HANDBOOK



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ESEA CHAPTER 2 HANDBOOK

Prepared by

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**Chapter 2, Division of Basic Education
Department of Accreditation and Curriculum Services
Montana Office of Public Instruction**

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INTRODUCTION

On April 28, 1988, the former Chapter 2 of the Education Consolidation Improvement Act (P.L. 97-253) was amended, creating the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-297). This law reauthorized a number of federal education programs, including the Elementary and Secondary Education Act (ESEA) of 1964. Today, Chapter 2 is contained within the provisions of Title I of ESEA.

When reauthorizing Chapter 2, Congress recognized the program as "successful in achieving the goals of increasing flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary education programs (20 USC 2911[a][1])." As a result, Congress retained the basic framework of Chapter 2, placing decision making at the state and local levels. At the same time, however, Congress responded to criticism that Chapter 2 was unfocused, provided insufficient accountability, and allowed funds to be used for general education purposes. Accordingly, the reauthorization of Chapter 2 sought to bring more focus to the broad range of programs that were allowable so that the benefits of the program could be traced to more specific outcomes and improvements in the quality of education. This resulted in the targeted assistance areas now specified in the law.

SECTION A.

PURPOSES OF THE LAW

The goal of Chapter 2 is to improve elementary and secondary education for children attending public and private nonprofit schools. The law also specifies that the five general purposes of the program are to:

1. Provide initial funding to enable state and local education agencies (SEAs and LEAs) to implement promising educational programs that can be supported by state and local sources of funding after the programs have been demonstrated to be effective;
2. Provide a continuing source of innovation, educational improvement, and support for library and instructional materials;
3. Meet the special educational needs of at-risk and high-cost students as described in section 1531(b) of the law;
4. Enhance the quality of teaching and learning through initiating and expanding effective schools programs; and
5. Allow SEAs and LEAs to meet their educational needs and priorities for targeted assistance as described in section 1531 of the law.

SECTION B.

SUMMARY OF PROVISIONS OF THE LAW

Appropriation. Section 1502 authorizes funding for a five-year period, beginning with \$580 million in fiscal year 1989, and increasing to \$706 million in fiscal year 1993.

Apportionment to states Each state is allotted an amount which bears the ratio of the school-age population of that state to the school-age population of all states. No state receives less than one-half percent.

Allocation to local education agencies (LEAs). The state shall distribute not less than 80 percent to LEAs according to the relative enrollments in public and private schools, adjusted to provide higher per pupil allocations to LEAs with the greatest numbers of children whose education imposes a higher than average cost.

Reserve use of funds. The funds reserved for state use may be used for state-level programs, including administration of the block grant, program evaluation, operations of the state advisory committee, technical assistance and direct grants to LEAs. At least 20 percent of the 20 percent reserved for state use must be used for statewide activities to carry out effective schools programs as described in Subpart 4 of the law.

LEAs are required to submit an application which provides for an advisory committee appointed by the Governor, sets out the use of state funds among the targeted assistance programs, and describes state procedures for allocating funds to LEAs.

Eligible targeted assistance programs. Chapter 2 funds shall be used only for the following *targeted assistance* programs:

1. Programs to meet the educational needs of:
 - a. Students at risk of failure in school
 - b. Students at risk of dropping out
 - c. Students whose education entails higher than average costs
2. Programs for the acquisition and use of instructional and educational material, including:
 - a. Library books and reference materials
 - b. Computer hardware and software for instructional use
 - c. Other curricular materials for improving the quality of education
3. Innovative programs for carrying out schoolwide improvements, including the effective schools program as defined in Subpart 4 (Sections 1541 and 1542) of the law.
4. Training and professional development for educational personnel.

5. Programs for enhancing personal excellence of students and student achievement, including:

Instruction in:

- a. Ethics
- b. Performing and creative arts
- c. Humanities

Activities in:

- a. Physical fitness
- b. Comprehensive health education

Participation in community service projects.

6. Other innovative projects that would enhance the educational program and climate of the school, including:
 - a. Programs for gifted and talented students
 - b. Technology education programs
 - c. Early childhood education programs
 - d. Community education
 - e. Programs for youth suicide prevention
7. Training programs to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students who may be at risk of illiteracy in their adult years. (Note: this is a new targeted assistance category, added to Chapter 2 law by Section 302 of Public Law 102-73, the "National Literacy Act of 1991.")

Authorized activities. Authorized activities include the planning, development, or operation and expansion of programs, projects, and activities which are designed to carry out the targeted assistance programs described above. These may include:

1. Training of educational personnel in any of the targeted assistance programs,
2. Guidance and counseling services,
3. Any other education or related activities which the state or local education agency determines will contribute to improving the targeted assistance programs.

To accomplish the above, an SEA or LEA may make grants to or contract with other public and private/non-profit agencies, organizations and institutions.

Local applications. To receive funds, an LEA must submit an application to the state. If the application meets the requirements listed below, the SEA certifies that the LEA is eligible to receive funds. Each application must:

1. Set forth the planned allocation of funds among the targeted assistance programs described in Section 1531 of the law, including the planned allocation of funds for the use of children enrolled in private, non-profit schools.
2. Describe the programs, projects and activities designed to carry out such targeted assistance.
3. State the reason for the selection of such programs, projects, and activities.
4. Describe how such targeted assistance will improve student achievement, or improve the quality of education for students.
5. Provide assurance of compliance with Chapter 2 law, including the participation of children enrolled in private, non-profit schools (Section 1572).
6. Agree to keep such records, and provide such information to the SEA as may reasonably be required for fiscal audit and program evaluation.
7. Assure that parents, teachers, administrators and other pertinent individuals or groups are systematically consulted as to the design, planning and implementation of programs, including the allocation of funds among the programs.

Effective schools programs. Chapter 2 funds used by SEAs and LEAs for effective schools programs will be used to plan, implement, and support effective schools programs, conduct training, provide technical assistance, develop evaluation systems, improve parent and community involvement, develop model programs, and disseminate information.

Effective schools must achieve the following:

- Strong and effective administrative and instructional leadership
- Emphasis on the acquisition of basic and higher-order skills
- Safe and orderly school environment
- Climate of expectation that virtually all children can learn
- Continuous assessment of students and programs

General administrative provisions. Part C of the law outlines general administrative provisions for SEAs and LEAs. The following are the most pertinent provisions for school districts:

1. Federal funds to be supplementary. Chapter 2 funds may only be used to supplement and increase the level of funding that would, in the absence of federal funds, be available to districts from non-federal sources. In no case may federal funds supplant non-federal funds.
2. Private school participation. Section 1572 details the obligation for LEA recipients to provide secular, neutral and non-ideological services, materials and equipment for the benefit of children in private, non-profit schools. Services can include the participation of private school education personnel in training programs.

In order to assure the equitable participation of private school students, an LEA, after consultation with the appropriate private school officials, may provide services and materials directly, or may contract with other educational organizations. LEAs may repair, remodel, or construct public facilities as may be necessary to provide direct services for the benefit of private school children.

The LEA shall maintain complete control of funds allocated for the benefit of private school children by administering the funds and maintaining the title to materials, equipment and property.

3. Evaluations and reporting. LEAs shall report annually to the SEA on the use of funds under the targeted assistance areas. The SEA shall report to the federal program annually, and shall evaluate the effectiveness of Chapter 2.
4. Applicable federal regulations. Except as specified in the statute, the General Education Provisions Act (GEPA) does not apply to Chapter 2. (Note: the applicable portions of Education Department General Administrative Regulations (EDGAR) are found in Chapter 2 Rules and Regulations.)

SECTION C.

DISTRIBUTION OF FUNDS TO DISTRICTS

Conditions for participation by LEAs.

- a. Receipt of funds. Eligible recipients for Chapter 2 funds are local education agencies as defined by the state. In Montana, an LEA is defined as a public institution or agency that has administrative control and direction of a public elementary or secondary school. Every year, the amount of Chapter 2 funds made available to Montana's LEAs is allocated according to a formula which makes equitable distribution among school districts and those private, non-profit schools wishing to participate. To receive funds, the LEA must submit an approvable application and must have complied with the previous year's financial and reporting requirements. Private, non-profit schools do not receive funding, but rather services and materials provided to them by the LEA. A separate allocation for any participating private, non-profit school is awarded to the LEA having jurisdiction over it.
- b. Use of funds. Subject to the limitations and requirements of Chapter 2, each LEA has complete discretion in determining how the funds it receives are to be divided among the seven targeted assistance areas.

One of the stated purposes of Chapter 2 is ". . . to allow state and local education agencies to meet their educational needs and priorities for targeted assistance described in Section 1531(b)." Therefore, the LEA has considerable flexibility in meeting its priority areas of need, but must limit its activities to the targeted purposes specified in the law.

Application procedures. In Montana, LEAs apply for funds annually by submitting the required application forms supplied by the Office of Public Instruction. Contents of the forms are consistent with the requirements under Section 1533 of the law (see also the section on Local Applications in the above Summary of Provisions of the law).

LEAs may submit their application at any time before the deadline of October 15 of each year, although no application can be approved until the federal notification of grant award is received by the Office of Public Instruction (usually in July or August). When the federal grant award notice is received, the Office of Public Instruction notifies all districts of the amounts allocated to each LEA, including the amount allocated for the use of private, non-profit schools.

LEAs that submit an approvable application receive grants based on a funding formula developed by the state Chapter 2 advisory committee and approved by the Office of Public Instruction. The current formula is included in this handbook as Appendix VIII.

Amendments to applications. LEAs may submit amendments to their approved application until April 30 of each year. An amendment, including an explanation of the needed change, is required for the following:

- a. When a change among approved program categories results in an increase or decrease of 10 percent or more of the funds the LEA originally allocated to that category;
- b. When the LEA wishes to switch any amount of funds from one or more approved program categories to a category not previously approved;
- c. When there is a change of focus in an approved program category resulting in the need for materials or services different from those approved by the SEA in the original application.

Note: Since an amendment is a revision of the LEA's plan, each amendment is subject to the provisions of Section 1533(a) of the law outlining the requirements, including systematic consultation of parents and others, of LEA applications.

Schedule for expending project funds. It is the policy of the Chapter 2 office of the Office of Public Instruction that LEAs shall not carry over Chapter 2 funds from one fiscal year to the next. Purchase orders and encumbrances must be liquidated (goods or services received, or purchase order cancelled) by June 30 of each fiscal year. Liabilities must be accrued for goods and services received but not paid by June 30 of each fiscal year.

Refunds of advance-type grants. Chapter 2 grants are "advance-type" grants, which means LEAs apply for cash in advance of grant expenditures. Unspent grant receipts at June 30 must be **refunded** to the Office of Public Instruction. To refund at fiscal year-end, the district must reduce the original revenue source code and reduce cash. If there is not time at fiscal year-end to make the actual refund, the LEA, rather than reducing cash, must record a liability account called "Due to Other Governments." In the following year, the warrant may be cut by reducing the liability account and cash. The accounting entries for this procedure can be found in Section 5-0240.20 of the School Accounting Manual.

SECTION D.

PROGRAM PLANNING, RECORD KEEPING, AND REPORTING

Program planning. LEAs and private, non-profit schools have complete discretion in determining how their Chapter 2 funds will be divided among the targeted areas described in the law. However, the law is also specific in requiring that these decisions be the result of a planning process. Parents, teachers and administrative personnel, along with other groups which may be involved in the implementation of projects funded by Chapter 2, must be **systematically** involved in this planning process. By systematic, we mean in accordance with an established school district policy with specific procedures to annually involve parents, teachers, administrators and others in:

- a. assessing district need for the improvement of elementary and secondary school programs,
- b. designing, planning and implementing programs,
- c. allocating funds among targeted areas, and
- d. assessing progress toward the project's goals of improving student achievement or the quality of education for students.

Record keeping. LEAs must retain records relating to Chapter 2 for five years after completion of the activity for which funds were used. Records consist of the following:

- a. The number of public and non-public participants by program category, the number of staff supported with Chapter 2 funds, and the dollar amounts by program category;
- b. Correspondence and any other pertinent evidence that all non-public schools in the district are notified annually and offered participation in the Chapter 2 program;
- c. Documentation of planning with officials of participating non-public schools;
- d. Documentation of systematic consultation with parents, teachers, administrators, and pertinent others (a sample consultation policy is included in this handbook as Appendix V);
- e. Duplicate copies of all forms submitted to the Office of Public Instruction (application/project plan, approved budget, amendments, cash disbursement records, annual performance reports, and written agreements for contracted services);
- f. An equipment inventory, with evidence that a physical inventory of equipment is conducted at least once every two years.

Reporting. The law requires each LEA receiving Chapter 2 funds to report annually on the use of funds, the types of services furnished, and the students served by Chapter 2 programs. For this purpose, the Office of Public Instruction provides an annual performance report form to be submitted by LEAs by July 30 of each year.

SECTION E.

QUESTIONS AND ANSWERS

This section includes some of the most often asked questions about local administration of Chapter 2. The answers are based on federal and state procedures used to comply with applicable laws, regulations, and non-regulatory guidelines.

QUESTION: Where do I find a list of Chapter 2 due dates?

ANSWER: Due dates are found in Appendix I of this handbook, and at the top of page 1 of the application form.

QUESTION: What is the relationship between the program codes listed on the application form and expenditure account codes?

ANSWER: There is no relation. Program codes are just identification numbers assigned to program categories under each targeted assistance area.

QUESTION: What library materials may the district purchase?

ANSWER: The best guidance is to apply the "supplement not supplant" rule. Chapter 2 cannot be used for purchasing or updating standard references any school should have in order to provide basic library services (Montana accreditation standards). Therefore, Chapter 2 would not be used to purchase dictionaries, encyclopedias, a periodical index, or other standard references. All purchases must be student instructional. Automation or other library management tools cannot be funded by Chapter 2. A library may, however, purchase computer hardware and software, and other current technological devices to be used by students if such purchases enhance the quality and scope of the library's reference services.

QUESTION: Are there restrictions on the types of equipment that can be purchased?

ANSWER: Restrictions are directly related to the intent of the Chapter 2 law. These funds are not to be used for general educational purposes, but rather to improve the quality of education in *targeted assistance* areas. Therefore, general purpose equipment such as photo-copiers, projectors, and laminating machines are not allowable expenditures.

Chapter 2 rules and regulations clearly state that, except to purchase computer hardware for instructional purposes, Chapter 2 funds may not be used to purchase instructional equipment unless it is used as a part of one of the targeted assistance programs listed in section 1531(b) of the law. This has been interpreted to mean that computers may be purchased as a program in and of itself, but all other equipment must be tied to a specific instructional program in one of the

seven targeted assistance areas. (Note: for further discussion of allowable costs, see the section "Use of Chapter 2 Funds" beginning on page 33 of the nonregulatory guidelines included in this handbook as Appendix IV.)

QUESTION: Can we purchase auxiliary equipment to go along with computers?

ANSWER: Auxiliary equipment such as cords, surge protectors, carts, and special furniture are allowable only if they are used to make a project funded by Chapter 2 work properly. For example, you could not use Chapter 2 funds to purchase a supply of auxiliary equipment to use with computers or a computer laboratory purchased with non-Chapter 2 funds.

QUESTION: How could we dispose of Chapter 2 equipment?

ANSWER: Equipment with a value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the government. If the item has a current fair market value of over \$5,000, you can keep it or sell it, but any profit over fair market value goes to the government.

QUESTION: How is equipment defined?

ANSWER: Chapter 2 defines equipment as an item having a unit value of \$300 or more and a useful life of more than a year.

QUESTION: What has to be labeled and inventoried?

ANSWER: All non-consumable books, materials, and equipment must be labeled "ESEA Chapter 2." The LEA is responsible for maintaining records for these purchases (including all items purchased for non-public schools) so that they can be easily identified as Chapter 2 in an audit or program review. An inventory of Chapter 2 equipment (items valued at \$300 or more) must contain the following:

1. description with manufacturer's name and model
2. serial or other identification number
3. acquisition date
4. cost
5. share of cost from all sources
6. location of the equipment

A physical inventory of equipment must be conducted at least once every two years, noting:

1. verification of existence
2. notes on condition
3. disposition of the item (lost, stolen, sold, or not repairable)

QUESTION: How long do we have to keep project records?

ANSWER: Five years in addition to the current year.

- QUESTION:** How often does OPI monitor Chapter 2 programs?
- ANSWER:** All Chapter 2 programs are subject to a program review every three years. Whenever possible, districts with a combined elementary and high school allocation of \$5,000 or more will receive site visitations. All others will be monitored by mail.
- QUESTION:** Can private or home schools buy materials or attend training and submit bills to the district for payment?
- ANSWER:** No. Refer to pages 79 through 94 of the nonregulatory guidelines included in this handbook as Appendix IV. The LEA must "keep title to and exercise continuing administrative control of all equipment and supplies" purchased for the use of non-public school children. Training services can be provided by the LEA, or the LEA can contract with another person or agency to provide the services. That person or agency, however, must be independent of the non-public school and of any religious organization. Such a contract has to be under the control and supervision of the LEA (Section 1572(c) of the law).
- QUESTION:** Can Chapter 2 funds be used for a summer program?
- ANSWER:** Yes, there are two ways. Current year funds can be used if arrangements are made with the Chapter 2 accountant at OPI to extend the liquidation deadline. An alternative way would be to request an early approval from the Chapter 2 specialist.
- QUESTION:** Can districts pool funds?
- ANSWER:** Yes. Procedures for doing this are included in the handbook as Appendix VI.

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APPENDIX I

ESEA **Chapter 2**

Elementary & Secondary Education Act

Chapter 2 Schedule (Due Dates)

CHAPTER 2 SCHEDULE

Beginning of project period	July 1
Final date for submission of application	October 15
Budget amendment deadline	April 30
Obligations deadline	May 30
Liquidation deadline	June 30
Annual performance report due	June 30
Final cash disbursement record due	August 31

APPENDIX II

ESEA **Chapter 2**

Elementary & Secondary Education Act

Public Law 100-297

CHAPTER 2 of Title I
of the
Elementary and Secondary Education Act of 1965
as Amended by the

Augustus F. Hawkins - Robert T. Stafford
Elementary and Secondary Improvement
Amendments of 1988
Public Law 100-297 - April 28, 1988

"CHAPTER 2-FEDERAL, STATE, AND LOCAL PARTNERSHIP
FOR EDUCATIONAL IMPROVEMENT

20 USC 2911.

"SEC. 1501. FINDINGS AND STATEMENT OF PURPOSE.

"(a) FINDINGS.-The Congress finds that-

"(1) chapter 2 of the Education Consolidation and Improvement Act of 1981 has been successful in achieving the goals of increasing local flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary educational programs;

"(2) State and local governments have placed a new focus on education;

"(3) school effectiveness can be increased through effective schools programs to improve student achievement, student behavior, teaching, learning, and school management; and

"(4) teachers make a significant and positive contribution to the education of our Nation's students, and local educational agencies are encouraged to recognize this contribution.

"(b) STATEMENT OF PURPOSE.-It is the purpose of programs under this chapter-

"(1) to provide the initial funding to enable State and local educational agencies to implement promising educational programs that can be supported by State and local sources of funding after such programs are demonstrated to be effective;

"(2) to provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

"(3) to meet the special educational needs of at risk and high cost students, as described in section 1531(b);

"(4) to enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

"(5) to allow State and local educational agencies to meet their educational needs and priorities for targeted assistance described in section 1531.

"(c) STATE AND LOCAL RESPONSIBILITY.-The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under this chapter will be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents and because they are the most likely to be able to

design programs to meet the educational needs of students in their own districts.

20 USC 2912.

"SEC. 1502. AUTHORIZATION OF APPROPRIATIONS; DURATION OF ASSISTANCE.

"(a) AUTHORIZATION.-There are authorized to be appropriated \$580,000,000 for the fiscal year 1989, \$610,000,000 for the fiscal year 1990, \$640,000,000 for the fiscal year 1991, \$672,000,000 for the fiscal year 1992, and \$706,000,000 for the fiscal year 1993, to carry out the provisions of this chapter.

"(b) DURATION OF ASSISTANCE.-During the period beginning October 1, 1988, and ending September 30, 1993, the Secretary shall, in accordance with the provision of this chapter, make payments to State educational agencies for the purpose of this chapter.

"PART A-STATE AND LOCAL PROGRAMS

"Subpart 1-General Provisions

20 USC 2921.

"SEC. 1511. ALLOTMENT TO STATES.

Territories, U.S.

"(a) RESERVATIONS.-(1) From the sums appropriated to carry out this chapter in any fiscal year, the Secretary shall reserve not to exceed 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs.

"(2) The Secretary shall reserve an additional amount, not to exceed 6 percent of the sums appropriated in each fiscal year, to carry out the provisions of part B.

"(b) ALLOTMENT.-From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such remainder.

"(c) DEFINITIONS.-For purposes of this section-

"(1) The term 'school-aged population' means the population aged 5 through 17.

"(2) The term 'States' includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

20 USC 2922.

"SEC. 1512. ALLOCATION TO LOCAL EDUCATIONAL AGENCIES.

Disadvantaged
persons.

"(a) DISTRIBUTION RULE.-From the sum made available each year under section 1511, the State educational agency shall distribute not less than 80 percent to local educational agencies within such State according to the relative enrollments in public and private, non-profit schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as-

"(1) children living in areas with high concentrations of low-

income families,

"(2) children from low-income families, and

"(3) children living in sparsely populated areas.

"(b) CALCULATION OF ENROLLMENTS.- (1) The calculation of relative enrollments under subsection (a) shall be on the basis of the total of-

"(A) the number of children enrolled in public schools, and

"(B) the number of children enrolled in private nonprofit schools that desire that their children participate in programs or projects assisted under this chapter,

for the fiscal year preceding the fiscal year in which the determination is made. Nothing in this subsection shall diminish the responsibility of local educational agencies to contact, on an annual basis, appropriate officials from private nonprofit schools within the areas served by such agencies in order to determine whether such schools desire that their children participate in programs assisted under this chapter.

"(2)(A) Relative enrollments under subsection (a) shall be adjusted, in accordance with criteria approved by the Secretary under subparagraph (B), to provide higher per pupil allocations only to local educational agencies which serve the greatest numbers or percentages of-

"(i) children living in areas with high concentrations of low-income families,

"(ii) children from low-income families, or

"(iii) children living in sparsely populated areas.

"(B) The Secretary shall review criteria submitted by a State educational agency for adjusting allocations under paragraph (1) and shall approve such criteria only if the Secretary determines that such criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the State's local educational agencies based on the factors set forth in subparagraph (A).

"(c) PAYMENT OF ALLOCATIONS.-

"(1) From the funds paid to it pursuant to section 1511 for a fiscal year, a State educational agency shall distribute to each eligible local educational agency which has submitted an application as required in section 1533 the amount of its allocation as determined under subsection (a).

"(2)(A) Additional funds resulting from higher per pupil allocations provided to a local educational agency on the basis of adjusted enrollments of children described in subsection (a), may, at the discretion of the local educational agency, be allocated for expenditures to provide services for children enrolled in public and private nonprofit schools in direct proportion to the number of children described in subsection (a) and enrolled in such schools within the local educational agency.

"(B) In any fiscal year, any local educational agency that elects to allocate such additional funds in the manner described in subparagraph (A) shall allocate all additional funds to schools within the local educational agency in such manner.

"(C) The provisions of subparagraph (A) and (B) may not be construed to require any school to limit the use of such additional funds to the provision of services to specific students or categories of students.

"Subpart 2-State Programs

20 USC 2931.

"SEC. 1521. STATE USES OF FUNDS.

"(a) AUTHORIZED ACTIVITIES.-A State educational agency may use funds reserved for State use under this chapter only for-

"(1) State administration of programs under this chapter including-

"(A) supervision of the allocation of funds to local educational agencies;

"(B) planning, supervision, and processing of State funds;

"(C) monitoring and evaluation of programs and activities under this part; and

"(D) operations of the State advisory committee;

"(2) technical assistance and direct grants to local educational agencies and statewide activities which assist local educational agencies to provide targeted assistance as provided in section 1531; and

"(3) assistance to local educational agencies and statewide activities to carry out effective schools programs under sub-part 4.

"(b) LIMITATIONS AND REQUIREMENTS.-

"(1) Not more than 25 percent of funds available for State programs under this part in any fiscal year may be used for State administration under subsection (a)(1).

"(2)(A) At least 20 percent of funds available for State programs under this part in any fiscal year shall be used for effective schools programs under subsection (a)(3).

"(B) If a State is spending from non-Federal sources an amount equal to twice as much as the State is required to use for the purposes of subsection (a)(3), the Secretary may waive the requirement of subparagraph (A). In deciding whether or not to grant such a waiver, the Secretary shall use the definition of effective schools contained in section 1471 (18).

20 USC 2932.

"SEC. 1522. STATE APPLICATIONS.

Grants.

"(a) APPLICATION REQUIREMENTS.-Any State which desires to receive grants under this chapter shall submit to the Secretary an application which-

"(1) designates the State educational agency as the State agency responsible for the administration and supervision of programs assisted under this chapter;

"(2) provides for a process of active and continuing consultation with the State educational agency of an advisory committee, appointed by the Governor and determined by the Governor to be broadly representative of the educational interests and the general public in the State, including individuals representative of-

"(A) public and private elementary and secondary schoolchildren;

"(B) classroom teachers;

"(C) parents of elementary and secondary schoolchildren;

"(D) local boards of education;

"(E) local and regional school administrators (including principals, superintendents, and administrators of intermediate educational units);

"(F) institutions of higher education;

"(G) the State legislature;

"(H) elementary and secondary school librarians; and

"(I) school counselors and other pupil services personnel,

to advise the State educational agency on the allocation among targeted programs in accordance with section 1531 (not to exceed 20 percent of the amount of the State's allotment) reserved for State use under section 1512(a), on the formula for the allocation of funds to local educational agencies, and on the planning, development, support, implementation, and evaluation of State programs assisted under this chapter;

"(3)(A) sets forth planned allocation of funds reserved for State use under section 1512(a) among the targeted assistance programs described in section 1531 and describes programs, projects, and activities which are designed to carry out such targeted assistance, together with the reasons for the selection of such programs, projects, and activities; and

"(B) sets forth the allocation of such funds required to implement section 1572;

"(4) describes how funds reserved under section 1521(b)(2) will be used to carry out subpart 4;

"(5) provides for timely public notice and public dissemination of the information provided pursuant to paragraphs (2) and (3);

"(6)(A) provides for an annual submission of data on the use of funds, the types of services furnished, and the students served under this chapter;

"(B) in fiscal year 1992, provides for an evaluation of the effectiveness of programs assisted under this chapter, which shall include comments of the advisory committee, and shall be made available to the public;

"(7) provides that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter);

"(8) provides assurance that, apart from technical and advisory assistance and monitoring compliance with this chapter, the State educational agency has not exercised and will not exercise any influence in the decisionmaking processes of local educational agencies as to the expenditures made pursuant to an application under section 1531;

"(9) provides the following information: (A) how the State will adjust its formula to comply with section 1512(b)(2), (B) how children under section 1512(b)(2)(A) are defined, (C) the basis on which a determination of the local educational agencies under section 1512(b)(2)(A) is made, and (D) the percentage of the State grant which is proposed to be allotted on an adjusted basis under section 1512; and

"(10) contains assurances that there is compliance with the specific requirements of this chapter.

"(b) PERIOD OF APPLICATION.-An application filed by the State under subsection (a) shall be for a period not to exceed 3 years, and may be amended annually as may be necessary to reflect changes without filing a new application.

"(c) AUDIT RULE.-Notwithstanding section 1745 of the Omnibus Budget Reconciliation Act of 1981, local educational agencies receiving less than an average \$5,000 each year under this chapter need not be audited more frequently than once every 5 years.

"Subpart 3-Local Targeted Assistance Programs

20 USC 2941.

"SEC. 1531. TARGETED USE OF FUNDS.

"(a) GENERAL RULE.-Funds allocated for use under this chapter shall be used by State and local educational agencies for targeted assistance described in subsection (b).

"(b) TARGETED ASSISTANCE.-The targeted assistance programs referred to in subsection (a) are-

"(1) programs to meet the educational needs of students at risk of failure in school and of dropping out and students for whom providing an education entails higher than average costs;

"(2) programs for the acquisition and use of instructional and educational materials, including library books, reference materials, computer software and hardware for instructional use, and other curricular materials that would be used to improve the quality of instruction;

"(3) innovative programs designed to carry out schoolwide improvements, including the effective schools program;

"(4) programs of training and professional development to enhance the knowledge and skills of educational personnel, including teachers, librarians, school counselors and other pupil services personnel, and administrators and school board members;

"(5) programs designed to enhance personal excellence of students and student achievement, including instruction in ethics, performing and creative arts, humanities, activities in physical fitness and comprehensive health education, and participation in community service projects; and

"(6) other innovative projects which would enhance the educational program and climate of the school, including programs for gifted and talented students, technology education programs, early childhood education programs, community education and programs for youth suicide prevention.

20 USC 2942.

"SEC. 1532. AUTHORIZED ACTIVITIES.

"(a) IN GENERAL.-Activities authorized under this subpart may include the planning, development, or operation and expansion of programs, projects, and activities which are designed to carry out the targeted assistance described in section 1531. Such activities may include-

"(1) training of educational personnel in any of the targeted assistance programs described;

"(2) guidance and counseling services; and

"(3) any other education or related activities which the State or local educational agency determines will contribute to improving the programs described in section 1531.

"(b) ADMINISTRATIVE AUTHORITY.-In order to conduct the activities authorized by this part, each State or local educational agency may use funds reserved for this part to make grants to and to enter into contracts with local educational agencies, institutions of higher education, libraries, museums, and other public and private non-profit agencies, organizations, and institutions.

Grants.
Contracts.

20 USC 2943.

"SEC. 1533. LOCAL APPLICATIONS.

"(a) CONTENTS OF APPLICATION.-A local educational agency or consortia of local educational agencies may receive an allocation of funds under this chapter for any year for which an application is submitted to the State educational agency and such application is certified to meet the requirements of this section. The State educational agency shall certify any such application if such application-

"(1)(A) sets forth the planned allocation of funds among targeted assistance programs described in section 1531 of this chapter and describes the programs, projects, and activities designed to carry out such targeted assistance which it intends to support, together with the reasons for the selection of such programs, projects, and activities; and

"(B) sets forth the allocation of such funds required to implement section 1572;

"(2) describes how assistance under this chapter will contribute to the goals of the program of improving student achievement or improving the quality of education for students;

"(3) provides assurances of compliance with provisions of this chapter including the participation of children enrolled in private, nonprofit schools in accordance with section 1572;

"(4) agrees to keep such records, and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this chapter; and

"(5) provides, in the allocation of funds for the assistance authorized by this chapter, and in the design, planning, and implementation of such programs, for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, with teachers and administrative personnel in such schools, and with other groups involved in the implementation of this chapter (such as librarians, school counselors, and other pupil services personnel) as may be considered appropriate by the local educational agency.

"(b) PERIOD OF APPLICATION.-An application filed by a local educational agency under subsection (a) shall be for a period not to exceed 3 fiscal years, may provide for the allocation of funds among programs and purposes authorized by this chapter for a period of 3 years, and may be amended annually as may be necessary to reflect changes without filing a new application.

"(c) LOCAL EDUCATIONAL AGENCY DISCRETION.-Subject to the

limitations and requirements of this chapter, a local educational agency shall have complete discretion in determining how funds under this subpart shall be divided among the areas of targeted assistance of this subpart. In exercising such discretion, a local educational agency shall ensure that expenditures under this subpart carry out the purposes of this chapter and are intended to meet the educational needs within the schools of that local educational agency.

"Subpart 4-Effective Schools Programs

20 USC 2951.

"SEC. 1541. ESTABLISHMENT.

"Funds shall be available under this chapter in accordance with section 1521 and 1531 to-

- "(1) plan, implement, support, evaluate, revise, and strengthen effective schools programs;
- "(2) plan and conduct training and other professional development activities for teachers, administrators and other education personnel on the implementation of effective schools programs;
- "(3) provide technical assistance and promote State and local educational agency awareness of effective schools research, model programs, and implementation;
- "(4) develop and implement systems to evaluate and analyze effective schools programs;
- "(5) improve parent and community involvement and participation as part of an ongoing effective schools program;
- "(6) support model and demonstration programs related to effective schools programs; and
- "(7) develop and disseminate educational materials related to effective schools programs.

20 USC 2952.

"SEC. 1542. EFFECTIVE SCHOOLS.

"For the purposes of this chapter the term 'effective schools programs' means school-based programs that may encompass preschool through secondary school levels and that have the objectives of (1) promoting school-level planning, instructional improvement, and staff development, (2) increasing the academic achievement levels of all children and particularly educationally deprived children, and (3) achieving as ongoing conditions in the school the following factors identified through effective schools research as distinguishing effective from ineffective schools:

- "(A) strong and effective administrative and instructional leadership that creates consensus on instructional goals and organizational capacity for instructional problem solving;
- "(B) emphasis on the acquisition of basic and higher order skills;
- "(C) a safe and orderly school environment that allows teachers and pupils to focus their energies on academic achievement;
- "(D) a climate of expectation that virtually all children can learn under appropriate conditions; and
- "(E) continuous assessment of students and programs to evaluate the effects of instruction.

"PART B-NATIONAL PROGRAMS AND ACTIVITIES

20 USC 2961.

"SEC. 1561. GENERAL AUTHORITY.

"(a) AUTHORIZATION.-From funds reserved under section 1511(a)(2), the Secretary is authorized to carry out the programs and activities under this part.

"(b) PRIORITY FUNDING.-Subject to the availability of funds for any fiscal year for this part, the Secretary shall make available-

"(1) not less than \$11,200,000 for National Diffusion Network activities under section 1562;

"(2) not less than \$8,200,000 for the Inexpensive Book Distribution program under section 1563;

"(3) not less than \$3,500,000 for the Arts in Education program under section 1564;

"(4) not less than \$3,200,000 for the law-related education program under section 1565; and

"(5) not more than \$1,500,000 for the Blue Ribbon Schools program under section 1566.

20 USC 2962.

"SEC. 1562. NATIONAL DIFFUSION NETWORK ACTIVITIES.

"(a) PURPOSES.-The National Diffusion Network shall be a national program that recognizes and furthers excellence in education by-

"(1) promoting the awareness and implementation of exemplary educational programs, products, and practices to interested elementary, secondary, and postsecondary institutions throughout the Nation; and

"(2) promoting the utilization of the knowledge, talents, and services of local staff associated with various educational excellence recognition efforts.

The National Diffusion Network shall be designed to improve the quality of education through the implementation of promising and validated innovations and improvements in educational programs, products, and practices, and through the provision of training, consultation, and related assistance services.

"(b) RESPONSIBILITIES OF SECRETARY.-In carrying out the activities under this section, which shall be limited to activities directly related to the National Diffusion Network, the Secretary shall-

"(1) acquaint persons responsible for the operation of elementary, secondary, and postsecondary schools with information about exemplary educational programs, products, practices, and services;

"(2) assist such persons in implementing programs, products, and practices which such persons determine may improve the quality of education in the schools for which they are responsible, by providing materials, initial training, and ongoing implementation assistance;

"(3) ensure that all such activities, programs, products, and practices are subjected to rigorous evaluation with respect to their effectiveness and their capacity for implementation;

"(4) provide program development assistance toward the recognition, dissemination, and implementation of promising practices that hold the potential for answering critical needs and that have achieved credibility because of their effective use in schools; and

"(5) ensure that a substantial percentage of the innovations disseminated represent significant changes in practice for schools and teachers.

In carrying out paragraph (3) of this section, the Secretary shall conduct a single external review by a program effectiveness panel that focuses exclusively on whether the program is efficacious and transferable to other educational settings. Any activity, program, product, or practice which meets the criteria of the preceding sentence may then be disseminated through the National Diffusion Network, and each eligible recipient (as described in subsection (c)) may apply for assistance in accordance with subsection (d).

"(c) ELIGIBLE RECIPIENTS OF GRANTS AND CONTRACTS.-For the purpose of carrying out the activities under this section, the Secretary is authorized to make grants to, and contracts with, local educational agencies, State educational agencies, institutions of higher education, and other public and private nonprofit educational institutions and organizations.

"(d) FUNDING CRITERIA.-(1) For the purpose of determining which projects to fund under this section, the Secretary shall assess the extent to which the projects meet the following criteria:

"(A) The applicant has a workable plan for disseminating its program.

"(B) The program's approach is innovative.

"(C) The program is accurate and up-to-date.

"(2) Each applicant for assistance under this section shall submit statements and supporting materials as required by the Secretary but shall not be required to submit more than a representative sample of the program materials of the applicant.

"(3) In establishing regulations under this section, including the specific evaluation criteria under paragraph (1), the Secretary shall consult with interested parties, including participants in the National Diffusion Network.

"(4) For fiscal year 1988 only, the Secretary shall assess applications for financial assistance under this section on the basis of the application or reapplication proposals.

"SEC. 1563. INEXPENSIVE BOOK DISTRIBUTION PROGRAM FOR READING MOTIVATION.

"(a) AUTHORIZATION.-The Secretary is authorized (1) to enter into a contract with Reading is Fundamental (RIF) (hereinafter in this section referred to as the 'contractor'), a private nonprofit organization which has as its primary purpose the motivation of children to learn to read, to support and promote the establishment of reading motivation programs which include the distribution of inexpensive books to students, and (2) to pay the Federal share of the cost of such programs.

"(b) REQUIREMENTS OF CONTRACT.-The contract shall provide that-

"(1) the contractor will enter into subcontracts with local private nonprofit groups or organizations or with public agencies (hereinafter referred to as 'subcontractors') under which the subcontractors will agree to establish, operate, and provide the non-Federal share of the cost of reading motivational programs which include the distribution of books by gift or loan, to preschool and elementary and secondary school children;

"(2) funds made available by the Secretary to a contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating reading motivational programs as provided in paragraph (1); and

"(3) the contractor will meet such other conditions and standards as the Secretary determines to be necessary to assure the effectiveness of the programs authorized by this section and will provide such technical

Contracts.
20 USC 2963.

Reading is
Fundamental.

assistance as may be necessary to carry out the purposes of this section.

"(c) RESTRICTION ON PAYMENTS.-The Secretary shall make no payment of the Federal share of the cost of acquiring and distributing books pursuant to a contract authorized by this section unless the Secretary determines that the contractor or subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

"(d) DEFINITIONS.-For purposes of this section the term 'Federal share' means-

"(1) with respect to the cost of books purchased by a subcontractor for a program in a locality for distribution of such books to children in that locality, 75 percent of the cost to such subcontractor; or

"(2) with respect to the cost of books purchased by a subcontractor for a program of distribution of books to children of migrant or seasonal farmworkers, 100 percent of the cost to such subcontractor for such books.

20 USC 2964.

"SEC. 1564. ARTS IN EDUCATION PROGRAM.

Grants.
Contracts.

"The Secretary shall carry out a program of grants and contracts to encourage and assist State and local educational agencies and other public and private agencies, organizations, and institutions to establish and conduct programs in which the arts are an integral part of elementary and secondary school curricula such as-

"(1) programs with public and private cultural organizations, agencies, and institutions, including museums, libraries, and theaters;

"(2) a program to develop and implement model projects and programs in the performing arts for children and youth, through arrangements made with the John F. Kennedy Center for the Performing Arts; and

Handicapped
persons.

"(3) a program for the identification, development and implementation of model programs and projects in the arts for individuals with handicaps through arrangements with the organization Very Special Arts.

20 USC 2965.

"SEC. 1565. LAW-RELATED EDUCATION PROGRAM.

Grants.
Contracts.

"(a) AUTHORIZATION.-The Secretary shall carry out a program of grants and contracts to encourage State and local educational agencies and other public and private nonprofit agencies, organizations, and institutions to provide law-related education programs.

"(b) DEFINITION.-For the purpose of this section, the term 'law-related education' means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which they are based.

"(c) AUTHORIZED ACTIVITIES.-Funds made available for the purposes of this section may be available for activities such as-

"(1) awareness activities to provide educators, law-related personnel, and the public with an understanding of what law-related education is;

"(2) support for new and ongoing programs in elementary and secondary schools, adult education, community organizations, and institutions of higher education, to provide law-related education, to develop materials and methods, to conduct pilot and demonstration projects, and to disseminate the products of such activities;

"(3) clearinghouse and technical assistance, to collect and provide information and assistance to institutions, groups, agencies, organizations,

and individuals to aid in establishing, improving, and expanding law-related education activities;

"(4) training for law-related personnel in the substance and practice of law-related education, including preservice and inservice seminars, workshops, institutes, and courses;

"(5) research and evaluation to study and improve the effectiveness of materials and methods in law-related education;

"(6) involvement of law-related organizations, agencies, and personnel, such as lawyers, law schools, law students, and law enforcement personnel in the provision of law-related education activities; and

"(7) youth internships for outside-the-classroom experiences with the law and the legal system.

Research and development.

20 USC 2966.

"SEC. 1566. BLUE RIBBON SCHOOLS PROGRAM.

"(a) GENERAL AUTHORITY.-The Secretary is authorized to carry out programs to recognize elementary and secondary schools or programs which have established standards of excellence and which have demonstrated a high level of quality. Such programs shall be designated as 'Blue Ribbon Schools'. In selecting schools and programs to be recognized, the Secretary shall competitively select public and private schools or programs within local educational agencies in the States, schools operated for Indian children by the Department of the Interior, and schools operated by the Department of Defense for dependents of Department of Defense personnel.

"(b) SELECTION PROCESS.-(1) The Secretary shall designate, each fiscal year, several categories for a Blue Ribbon Schools program. Such categories may include, but shall not be limited to, outstanding elementary schools, outstanding secondary schools, outstanding mathematics and science programs, or outstanding reading programs.

"(2) Within each category, the Secretary shall determine the criteria and procedures for selection. Selection for such awards shall be based solely on merit. Schools or programs selected for awards under this section shall not be required to be representative of the States.

"(c) ADMINISTRATIVE PROVISIONS.-(1) The Secretary shall carry out the provisions of this section including the establishment of the selection procedures, after consultation with appropriate outside parties.

"(2) No award may be made under this section unless the local educational agency submits an application to the Secretary at such time, in such manner, and containing such information, as the Secretary may reasonably require.

"(3) For the purposes of this section, the term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"PART C-GENERAL ADMINISTRATIVE PROVISIONS

20 USC 2971.

"SEC. 1571. MAINTENANCE OF EFFORT; FEDERAL FUNDS SUPPLEMENTARY.

"(a) MAINTENANCE OF EFFORT.-(1) Except as provided in paragraph (2), a State is entitled to receive its full allocation of funds under this chapter for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of such

combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

"(2) The Secretary shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 percent of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

"(3) The Secretary may waive, for 1 fiscal year only, the requirements of this subsection if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

"(b) FEDERAL FUNDS SUPPLEMENTARY.- A State or local educational agency may use and allocate funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under this chapter, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

20 USC 2972.

"SEC. 1572. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

"(a) PARTICIPATION ON EQUITABLE BASIS.- (1) To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this chapter or which serves the area in which a program or project assisted under this chapter is located who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded by the State educational agency from funds reserved for State use, such agency, after consultation with appropriate private school officials, shall provide for the benefit of such children in such schools secular, neutral, and nonideological services, materials, and equipment, including the participation of the teachers of such children (and other educational personnel serving such children) in training programs, and the repair, minor remodeling, or construction of public facilities as may be necessary for their provision (consistent with subsection (c) of this section), or, if such services, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this chapter.

Contracts.

"(2) If no program or project is carried out under subsection (a)(1) of this section in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in that district are provided with services and materials to the extent that would have occurred if the local educational agency had received funds under this chapter.

"(3) The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs and projects carried out under this chapter by a State or local educational agency, whether directly or through grants to or contracts with other public or private agencies, institutions, or organizations.

"(b) EQUAL EXPENDITURES.- Expenditures for programs pursuant to subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this chapter for children enrolled in the public

schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures, and when funds available to a local educational agency under this chapter are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs or projects.

"(c) FUNDS.-(1) The control of funds provided under this chapter, and title to materials, equipment, and property repaired, remodeled, or constructed therewith, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer such funds and property.

Contracts.

"(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which, in the provision of such services, is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this chapter shall not be commingled with State or local funds.

"(d) STATE PROHIBITION WAIVER.- If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation in programs of children enrolled in private elementary and secondary schools, as required by this section, the Secretary shall waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

"(e) WAIVER AND PROVISION OF SERVICES.-(1) If the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, the Secretary may waive such requirements and shall arrange for the provision of service to such children through arrangements which shall be subject to the requirements of this section.

"(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d), the Secretary may withhold from the allocation of the affected State or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

"(f) DETERMINATION.- Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b).

"(g) PAYMENT FROM STATE ALLOTMENT.- When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this chapter.

Courts, U.S.

"(h) REVIEW.-(1) The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why that action should not be taken.

"(2) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1) of this subsection, it may, within 60

days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

Records.

The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based this action, as provided in section 2112 of title 28, United States Code.

"(3) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgement of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(i) PRIOR DETERMINATION.- Any bypass determination by the Secretary under chapter 2 of the Education Consolidation and Improvement Act of 1981 shall to the extent consistent with the purposes of this chapter apply to programs under this chapter.

20 USC 2973.

"SEC. 1573. EVALUATIONS AND REPORTING.

"(a) LOCAL EDUCATIONAL AGENCIES.- A local educational agency which receives financial assistance under this chapter shall report annually to the State educational agency on the use of funds under section 1531. Such reporting shall be carried out in a manner which minimizes the amount of paperwork required while providing the State educational agency with the necessary information under the preceding sentence. Such report shall be made available to the public.

"(b) STATE EDUCATIONAL AGENCIES.- A State educational agency which receives financial assistance under this chapter shall evaluate the effectiveness of State and local programs under this chapter in accordance with section 1522(a)(6)(B). That evaluation shall be submitted for review and comment by the State advisory committee and shall be made available to the public. The State educational agency shall submit to the Secretary a copy of the evaluation and a summary of the reports under subsection (a).

"(c) REPORTS.- (1) The Secretary, in consultation with State and local educational agency representatives, shall develop a model system which State educational agencies may use for data collection and reporting under this chapter.

"(2)(A) The Secretary shall submit annually a report to the Congress for the use of funds, the types of services furnished, and the students served under this chapter.

"(B) The Secretary shall not later than October 1, 1992, submit a report to the Congress summarizing evaluations under subsection (b) in order to provide a national overview of the uses of funds and effectiveness of programs under this chapter.

20 USC 2974.

"SEC. 1574. FEDERAL ADMINISTRATION.

"(a) TECHNICAL ASSISTANCE.- The Secretary, upon request, shall provide technical assistance to State and local educational agencies under this chapter, particularly with respect to implementation of the programs and activities under subpart 4.

Regulations.	"(b) RULEMAKING.-The Secretary shall issue regulations under this chapter only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by this chapter. "(c) AVAILABILITY OF APPROPRIATIONS.-Notwithstanding any other provision of law, unless expressly in limitation of this subsection, funds appropriated in any fiscal year to carry out activities under this chapter shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the subsequent fiscal year. "(d) SPECIAL RULE.-The provisions of sections 1433 and 1434 shall apply to the programs authorized by this chapter.
20 USC 2975.	"SEC. 1575. APPLICATION OF GENERAL EDUCATION PROVISIONS ACT. "(a) GENERAL RULE.-Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this chapter. "(b) APPLICABILITY.-The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this chapter with respect to the programs authorized by this chapter:
20 USC 1221e-3.	"(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 1574(b) of this chapter.
20 USC 1231c.	"(2) Section 426(a) of such Act is superseded by section 1574(a) of this chapter.
20 USC 1231d.	"(3) Section 427 of such Act is superseded by section 1534(a)(5) of this chapter.
20 USC 1231g.	"(4) Section 430 of such Act is superseded by section 1522 and 1533 of this chapter. "(c) SPECIAL RULE.-Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, may not apply to the programs authorized by this chapter and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.
20 USC 2976.	"SEC. 1576. TRANSITION PROVISIONS.
Grants. Contracts.	"(a) REGULATIONS.-All orders, determinations, rules, regulations, permits, grants, and contracts, which have been issued under chapters 2 and 3 of the Education Consolidation and Improvement Act of 1981 (as in effect on the date before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988), or which are issued under such Act on or before the effective date of this Act shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law other than this Act. "(b) EFFECT ON PENDING PROCEEDINGS.-The provisions of this chapter shall not affect administrative or judicial proceedings pending on the effective date of this Act under chapters 2 and 3 of the Education Consolidation and Improvement Act of 1981.
Effective date. Termination date.	"(c) TRANSITION.-With respect to the period beginning July 1, 1988, and ending June 30, 1989, no recipient of funds under this Act or chapter 2 of the Education Consolidation and Improvement Act of 1981 shall be held to have expended such funds in violation of the requirements of this Act or of such Act if such funds are expended in accordance with this Act or such Act.

(B) by amending subsection (b) to read as follows:

“(b) SPECIAL RULE.—At least $\frac{2}{3}$ of the 15 percent reserved pursuant to subsection (a) shall be used to carry out the provisions of paragraphs (2) and (3) of subsection (a).”.

(h) FEDERAL RESPONSIBILITY.—Section 361 of the Adult Education Act (20 U.S.C. 1209) is amended by adding at the end the following:

“(c) FEDERAL RESPONSIBILITY.—Within 1 year after the enactment of the National Literacy Act of 1991, the Secretary, in consultation with appropriate experts, educators, and administrators, shall develop indicators of program quality that may be used by State and local programs receiving assistance under this title as models by which to judge the success of such programs, including success in recruitment and retention of students and improvement in the literacy skills of students. Such indicators shall take into account different conditions under which programs operate and shall be modified as better means of assessing program quality are developed.”.

SEC. 302. TARGETED ASSISTANCE.

Section 1531(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2941) is amended by—

(1) redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(2) inserting the following new paragraph (5) after paragraph (4):

“(5) programs of training to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students with reading and reading-related problems that place such students at risk for illiteracy in their adult years;”.

SEC. 303. AMENDMENTS TO THE EVEN START PROGRAM.

(a) AMENDMENT TO PART HEADING.—The heading for part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.) is amended to read as follows:

“PART B—EVEN START FAMILY LITERACY PROGRAMS”.

(b) STATE GRANT PROGRAM.—Section 1052 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2742) is amended—

(1) in subsection (a), by striking “local educational agencies or consortia of such agencies” and inserting “eligible entities”;

(2) in subsection (b)—

(A) by inserting “(1)” before “In”; and

(B) by adding at the end the following:

“(2) In any fiscal year in which this subsection applies, no State shall award a grant under this part for an amount less than \$75,000.

“(3) In any year in which this subsection applies, each State that receives a grant under this part may use not more than 5 percent of assistance provided under the grant for costs of—

“(A) administration; and

“(B) the provision, through grant or contract, of technical assistance for program improvement and replication to eligible entities that receive grants under this part.”;

(3) by redesignating subsection (c) as subsection (d);

APPENDIX III

ESEA **Chapter 2**

Elementary & Secondary Education Act

Rules and Regulations

**Wednesday
April 18, 1990**

Part V

**Department of
Education**

**Office of Elementary and Secondary
Education**

34 CFR Parts 76, 77, and 298

**Federal, State, and Local Partnership for
Educational Improvement; Final Rule**

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 76, 77, and 298

RIN 1310-AA49

Federal, State, and Local Partnership for Educational Improvement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations in part 298 implementing the program entitled "Federal, State, and Local Partnership for Educational Improvement" in chapter 2 of title I of the Elementary and Secondary Education Act of 1965, as amended. This program replaces chapter 2 of the Education Consolidation and Improvement Act of 1981. The Secretary also makes certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to these regulations. Accordingly, the Secretary makes conforming changes to several sections in parts 76 and 77.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Genevieve W. Cornelius, Director, Division of Formula Grants, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 2040), Washington, DC 20202-4636, (202) 732-4064.

SUPPLEMENTARY INFORMATION: On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297. Title I of that act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. Chapter 2 of title I of the ESEA, entitled "Federal, State, and Local Partnership for Educational Improvement," reauthorizes chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA).

Chapter 2 of the ECIA consolidated over forty Federal education programs into a single authorization of grants to States for the same purposes as the antecedent programs but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by those agencies. State educational agencies (SEAs) had the basic responsibility for the administration of chapter 2 funds. Responsibility for the design and implementation of chapter 2 programs, however, rested mainly with local educational agencies (LEAs), school superintendents and principals, and classroom teachers and supporting personnel.

In reauthorizing chapter 2, Congress recognized that the program had been "successful in achieving the goals of increasing local flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary education programs." 20 U.S.C. 2911(a). As a result, Congress retained the basic framework of chapter 2, which places decisionmaking at the State and local levels. At the same time, however, Congress responded to criticism that chapter 2 was unfocused, provided insufficient accountability, and sometimes resulted in funds being used for general education purposes. Accordingly, Congress sought to make chapter 2 "a better vehicle for school improvement by recasting the uses of funds in general terms, but with an identifiable theme of improving quality and promoting innovation." H.R. Rept. 95, 100th Cong., 1st Sess. 50 (1987). Specifically, Congress identified six broad purposes for which chapter 2 funds must now be targeted: Programs for at-risk students; programs to acquire and use instructional materials to improve the quality of instruction; innovative programs for schoolwide improvements, including effective school programs; programs of training and professional development; programs to enhance personal excellence of students and student achievement; and other innovative projects to enhance the educational program and climate of the school. Within those parameters, however, State and local educational agencies retain the flexibility to decide how to use their chapter 2 funds.

On March 1, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (54 FR 8708). The preamble also included a summary of the significant changes resulting from reauthorization. In the NPRM, the Secretary also proposed assisting States

in improving financial accountability and consistency by making certain provisions of EDGAR applicable.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, sixty-five parties submitted comments on the proposed regulations. An analysis of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section the regulations to which they pertain. Technical and other minor changes are not addressed.

Section 298.2(a)(1)(vi) of these final regulations makes applicable 34 CFR part 85—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants). A full discussion of how part 85 applies to the chapter 2 program is included in the appendix.

After extensive review of State comments, in the final rule the Secretary modified the applicability of EDGAR in ways that fully meet the substantive concerns of some States, while balancing the need for all States to have appropriate systems of financial accountability.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these final regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the program governed by these regulations supports and strengthens the family by providing for systematic consultation with the parents of children attending elementary and secondary schools in the design, planning, and implementation of the program. Moreover, funds under this program may be used to foster parent involvement through such activities as conducting parent workshops, training parents to work with their children at home, and facilitating parent participation in school activities.

List of Subjects in 34 CFR Parts 76, 77, and 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs

education, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Catalog of Federal Domestic Assistance Number 84.151, Federal, State, and Local Partnership for Educational Improvement)

Dated: April 11, 1990.

Guillermo F. Cavazos,
Secretary of Education.

The Secretary amends parts 76 and 77 and revises part 298 of title 34 of the Code of Federal Regulations as follows:

1. Part 298 is revised to read as follows:

PART 298—FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

Subpart A—How a State or Local Educational Agency Obtains Funds

Sec.

- 298.1 Purpose.
- 298.2 Applicable regulations.
- 298.3 Definitions.
- 298.4 State advisory committee.
- 298.5 State applications.
- 298.6 LEA applications.
- 298.7 Allocation of Chapter 2 funds to LEA.
- 298.8 Reallocation.
- 298.9–298.10 [Reserved]

Subpart B—Project Requirements That a State or Local Educational Agency Must Meet

- 298.11 General responsibilities of State and local educational agencies.
- 298.12 Targeted assistance programs.
- 298.13 Use of funds by SEAs.
- 298.14 Use of funds by LEAs.
- 298.15 Evaluations and reports.
- 298.16–298.20 [Reserved]

Subpart C—Fiscal Requirements That a State or Local Educational Agency Must Meet

- 298.21 Maintenance of effort.
- 298.22 Waiver of the maintenance of effort requirement.
- 298.23 Supplement-not-supplant.
- 298.24–298.30 [Reserved]

Subpart D—How Children Enrolled in Private Schools Participate

- 298.31 Responsibility of SEAs and LEAs.
- 298.32 Consultation with private school officials.
- 298.33 Needs, number of children, and types of services.
- 298.34 Factors used in determining equitable participation.
- 298.35 Funds not to benefit a private school.
- 298.36 Equipment and supplies.
- 298.37 Construction.
- 298.38 Bypass.
- 298.39–298.40 [Reserved]

Authority: 20 U.S.C. 2911–2952, 2971–2976, unless otherwise noted.

Subpart A—How a State or Local Educational Agency Obtains Funds

§ 298.1 Purpose.

Under the Federal, State, and Local Partnership for Educational Improvement program (referred to in this part as the chapter 2 program), the Secretary provides Federal financial assistance to State and local educational agencies to—

(a) Provide the initial funding to implement promising educational programs that can be supported with State and local funds after those programs have been demonstrated to be effective;

(b) Provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

(c) Meet the special educational needs of at-risk and high-cost students;

(d) Enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

(e) Meet their educational needs and priorities for targeted assistance.

(Authority: 20 U.S.C. 2911(b))

§ 298.2 Applicable regulations.

(a) The following regulations apply to the chapter 2 program:

(1) The Education Department General Administrative Regulations (EDGAR) as follows:

(i) 34 CFR part 76 (State-Administered Programs) as follows:

(A) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(B) Sections 76.125–76.137 (Consolidated Grant Applications for Insular Areas).

(C) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(D) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?) as follows:

(1) Section 76.500 (Federal statutes and regulations on nondiscrimination).

(2) Section 76.532 (Use of funds for religion prohibited).

(3) Section 76.533 (Acquisition of real property; construction).

(4) Section 76.534 (Use of tuition and fees restricted).

(5) Section 76.563 (Restricted indirect cost rate—programs covered).

(6) Section 76.592 (Federal evaluation—satisfying requirement for State or subgrantee evaluation).

(7) 34 CFR 75.601–75.602, 75.609–75.611, 75.613, and 75.616 concerning construction authorized under § 298.37(b), incorporated by reference in § 76.600.

(8) Sections 76.670–76.677 (Procedures for Bypass).

(9) Section 76.682 (Treatment of animals).

(E) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?) as follows:

(1) Section 76.703 (When a State may begin to obligate funds).

(2) Section 76.704 (When certain subgrantees may begin to obligate funds).

(3) Section 76.705 (Funds may be obligated during a "carryover period").

(4) Section 76.706 (Obligations made during a carryover period are subject to current statutes, regulations, and applications).

(5) Section 76.707 (When obligations are made).

(6) Section 76.730 (Records related to grant funds).

(7) Section 76.734 (Record retention period).

(8) Section 76.740 (Protection of and accessibility to student records).

(9) Section 76.760 (More than one program may assist a single activity).

(10) Section 76.783 (State educational agency action—subgrantee's opportunity for a hearing).

(F) Section 76.901 (Education Appeal Board).

(ii) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(iii) 34 CFR part 78 (Education Appeal Board).

(iv) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(v) 34 CFR part 82 (New Restrictions on Lobbying).

(vi) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(2) The regulations in this part 298.

(b)(1) A State shall have fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State and local governments.

(2) A State may satisfy this requirement by—

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and in 34 CFR 75.603–75.608, 75.612, 75.614, and 75.615 (concerning construction authorized under § 298.37(b)).

(Authority: 20 U.S.C. 2911–2952, 2971–2976)

§ 298.3 Definitions.

(a) *Definition in the Elementary and Secondary Education Act of 1965.* The following terms used in this part are defined in section 1471 of the Act:

Construction
Elementary school
Equipment
Free public education
Local educational agency (LEA)
Parent
Pupil services
Pupil services personnel
School facilities
Secondary School
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Minor remodeling
Nonprofit
Private
Public

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Chapter 2 means chapter 2 of title I of the Act.

(Authority: 20 U.S.C. 2891, 2911–2952, 2971–2976)

§ 298.4 State advisory committee.

(a) Any State that desires to receive a grant under this part shall establish an advisory committee that meets the requirements in section 1522(a)(2) of the Act.

(b) An existing organization may be the advisory committee for the purpose of paragraph (a) of this section if the organization—

(1) Is not the SEA under State law;

(2) Is appointed by the Governor to be the advisory committee; and

(3) Meets the representation requirements of section 1522(a)(2) of the Act.

(c) The State advisory committee advises the SEA on—

(1) The allocation among targeted programs under § 298.12 of funds reserved for State use under section 1512(a) of the Act;

(2) The formula for the allocation of funds to LEAs; and

(3) The planning, development, support, implementation, and evaluation of State programs assisted under this part.

(Authority: 20 U.S.C. 2932(a) (2))

§ 298.5 State applications.

(a)(1) Any State that desires to receive a grant under this part shall submit an application to the Secretary that meets the requirements in section 1522 of the Act.

(2) The application may be submitted in any form that the State determines is appropriate.

(b)(1) A State shall file its chapter 2 application for a period not to exceed three years.

(2) If a State that submits an application covering more than one year makes any substantial changes in its application, the State shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(Approved by the Office of Management and Budget under control number 1810–0053)

(Authority: 20 U.S.C. 2932)

§ 298.6 LEA applications.

(a) An LEA may receive its allocation of funds under this part for any year for which—

(1) The LEA has an application on file with the SEA; and

(2) The SEA has certified that the application meets the requirements in section 1533(a) of the Act.

(b)(1) An LEA shall file its application for a period not to exceed three years.

(2) If an LEA that submits an application covering more than one year makes any substantial changes in its application, the LEA shall—

(i) File a new application; or

(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in section 1533(a) of the Act, an LEA's application must provide for systematic consultation, in the allocation of funds for programs authorized by chapter 2 and in the design, planning, and implementation of those programs, with—

(1) Parents of children attending public and private elementary and

secondary schools in the area served by the LEA;

(2) Teachers and administrative personnel in those schools; and

(3) Other groups involved in the implementation of chapter 2 (such as librarians, school counselors, school social workers, school psychologists, and other pupil services personnel) as the LEA deems appropriate.

(d) An LEA may apply for chapter 2 funds by itself or with a consortium of LEAs.

(Approved by the Office of Management and Budget under control number 1810–0053)

(Authority: 20 U.S.C. 2943)

§ 298.7 Allocation of chapter 2 funds to LEAs.

(a) An SEA shall distribute to each LEA that has submitted an application as required in § 298.6 the amount of its allocation as determined under paragraph (b) of this section.

(b)(1) From the funds made available to an SEA each year under this part, the SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and private, nonprofit schools within the school districts of those agencies.

(2) The SEA shall—

(i) Calculate relative enrollments within each LEA on the basis of the total number of children enrolled for the fiscal year preceding the fiscal year in which the determination is made in—

(A) Public schools in the LEA; and

(B) Private, nonprofit schools in the LEA that desire that their children participate in chapter 2 programs; and

(ii) Adjust those relative enrollments in accordance with criteria approved by the Secretary under paragraph (d) of this section, to provide higher per pupil allocations only to LEAs that serve the greatest numbers or percentages of—

(A) Children living in areas with high concentrations of low-income families;

(B) Children from low-income families; or

(C) Children living in sparsely populated areas.

(c) The State shall include in its application under § 298.5 the following information concerning adjustments under paragraph (b)(2)(ii) of this section:

(1) How the State adjusted its formula;

(2) How the children under paragraph (b)(2)(ii) of this section are defined.

(3) The basis on which the State determined which LEAs serve the greatest numbers or percentages of the children described in paragraph (b)(2) of this section.

(4) The percentage of the funds for As that the State proposes to allot on adjusted basis.

(d) The Secretary reviews and approves the State's criteria for justifying allocations to LEAs if the criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the State's LEAs based on the factors contained in paragraph (b)(2)(ii) of this section.

Approved by the Office of Management and Budget under control number 1810-0053)
Authority: 20 U.S.C. 2922)

§ 298.8 Reallocation.

(a) An SEA reallocate to other LEAs chapter 2 funds—

(1) From an LEA that—

(i) Does not participate in the chapter 2 program; or

(ii) Has chapter 2 funds that exceed the amount required to—

(A) Operate its chapter 2 projects during the current fiscal year in accordance with its approved application; and

(B) Provide a prudent and justifiable reserve of chapter 2 funds for operating chapter 2 projects effectively during the next fiscal year; or

(2) That are recovered by the State based on a determination by the State that the LEA has failed to spend LEA chapter 2 funds in accordance with applicable law.

(b) A reallocation of funds under this section—

(1) May be made only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year;

(2) Must be made in accordance with the purposes of chapter 2; and

(3) Must be spent in accordance with the requirements in chapter 2 and the regulations in this part.

Authority: 20 U.S.C. 2922)

§ 298.9-298.10 [Reserved]

Part B—Project Requirements That State or Local Educational Agency Must Meet

§ 298.11 General responsibilities of State and local education agencies.

(a) *State educational agencies.* (1)(i) Except as provided in paragraph

(ii) of this section, an SEA has the principal responsibility for the

administration and supervision of programs assisted with chapter 2 funds. This responsibility must be carried out with a minimum of paperwork.

(ii) Apart from providing technical and advisory assistance and monitoring compliance with chapter 2, an SEA may

not exercise any influence in the decisionmaking processes of an LEA concerning the expenditures described in the LEA's application.

(2) To carry out its responsibilities, an SEA may, in accordance with State law, issue rules, regulations, or policies relating to the administration and operation of programs funded under this part provided that those rules, regulations, or policies do not conflict with the provisions of—

(i) Chapter 2;

(ii) The regulations in this part, including the discretion granted to SEAs under paragraph (b) of this section; or

(iii) Other applicable Federal statutes and regulations.

(b) *Local educational agencies.* (1) An LEA has complete discretion, subject only to the limitations and requirements of chapter 2, in determining how funds the agency receives under section 1512 of the Act are distributed among the areas of targeted assistance in accordance with the LEA's chapter 2 application.

(2) In exercising this discretion, the LEA shall ensure that each expenditure of chapter 2 funds—

(i) Carries out the purposes of chapter 2; and

(ii) Meets the educational needs within the schools of that LEA.

(Authority: 20 U.S.C. 2911(c), 2932, 2943(c))

§ 298.12 Targeted assistance programs.

(a) Consistent with paragraph (b) of this section, chapter 2 funds may be used for the planning, development, operation, and expansion of the following:

(1) Programs to meet the educational needs of—

(i) Students at risk of failure in school;

(ii) Students at risk of dropping out of school; and

(iii) Students for whom providing an education entails higher than average costs.

(2) Programs for the acquisition and use of instructional and educational materials, including library books, reference materials, computer software and hardware for instructional use, and other curricular materials that would be used to improve the quality of instruction.

(3) Innovative programs designed to carry out schoolwide improvements, including effective schools programs under sections 1541-1542 of the Act.

(4) Programs of training and professional development to enhance the knowledge and skills of educational personnel, including teachers, librarians, school counselors, school social workers, school psychologists and other pupil services personnel, and

administrators and school board members.

(5) Programs designed to enhance personal excellence of students and student achievement, including instruction in ethics, performing and creative arts, humanities, activities in physical fitness and comprehensive health education, and participation in community service projects.

(6) Innovative projects to enhance the educational program and climate of the school, including programs for gifted and talented students, technology education programs, early childhood education programs, community education and programs for youth suicide prevention.

(b) Except to purchase computer hardware for instructional purposes under section 1531(b)(2) of the Act, chapter 2 funds may not be used to purchase instructional equipment unless that instructional equipment is used as a part of a program under paragraph (a) of this section.

(c) In conducting targeted assistance programs under this section, an SEA or LEA may use chapter 2 funds to make grants to and to enter into contracts with LEAs, institutions of higher education, libraries, museums, and other public and private nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 2941-2942, 2951-2952)

§ 298.13 Use of funds by SEAs.

(a) *Authorized activities.* An SEA may use chapter 2 funds reserved for State use only for—

(1) State administration of chapter 2 programs, subject to paragraph (b)(1) of this section, including—

(i) Supervising the allocation of chapter 2 funds to LEAs;

(ii) Planning, supervising, and processing chapter 2 funds reserved for State use;

(iii) Monitoring and evaluating chapter 2 programs and activities; and

(iv) Operating the State advisory committee.

(2) Assistance to LEAs to provide targeted assistance under § 298.12 in the form of—

(i) Direct grants to LEAs;

(ii) Statewide activities; and

(iii) Technical assistance.

(3) Assistance to LEAs and statewide activities, in accordance with paragraph (b)(2) of this section, to carry out effective schools programs under sections 1541-1542 of the Act.

(b) *Limitations.*—(1) *State administration.* An SEA may not use more than 25 percent of the chapter 2 funds reserved for State use in any fiscal

year for State administration under paragraph (a)(1) of this section.

(2) *Effective schools programs.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an SEA shall use at least 20 percent of the chapter 2 funds reserved for State use in any fiscal year for effective schools programs under sections 1541-1542 of the Act.

(ii) If a State is spending from non-Federal funds an amount equal to twice the amount required under paragraph (b)(2)(i) of this section, the SEA may request the Secretary to waive the requirement in that paragraph by submitting a written request that includes—

(A) The amount the State is spending from non-Federal funds for effective schools programs; and

(B) A description of those effective schools programs that addresses the factors in section 1542 of the Act.

(Approved by the Office of Management and Budget under control number 1810-0053).

(Authority: 20 U.S.C. 2931, 2941-2942, 2951-2952)

§ 298.14 Use of funds by LEAs.

(a) *General.* An LEA may use chapter 2 funds to support one or more of the targeted assistance programs under § 298.12.

(b) *Special rules.* (1) If an LEA receives additional chapter 2 funds as a result of adjusted allocations under § 298.7(b)(2)(ii), the LEA may, at its discretion, use those funds either—

(i) To provide services to children enrolled in public and private, nonprofit schools in accordance with § 298.34(a)(2); or

(ii) To provide services only to children enrolled in schools—both public and private—in which children described in § 298.7(b)(2)(ii) are enrolled.

(2) If, in any fiscal year, an LEA uses chapter 2 funds under paragraph (b)(1)(ii) of this section, the LEA shall—

(i) Use all funds received as a result of adjusted allocations in that manner; and

(ii) Use in each school with children described in § 298.7(b)(2)(ii) the amount generated by those children who are enrolled in that school.

(3) An LEA is not required to use chapter 2 funds received under § 298.7(b)(2)(ii) to provide services to the children who generated those funds.

(Authority: 20 U.S.C. 2922(c)(2), 2941-2942, 2951-2952)

§ 298.15 Evaluations and reports.

(a) *LEA responsibilities.* (1) An LEA shall—

(i) Report annually to the SEA on the LEA's use of funds under § 298.14; and

(ii) Make that report available to the public.

(2) The LEA shall provide other information to the SEA as reasonably may be required for fiscal audit and program evaluation consistent with the SEA's responsibilities under this part.

(b) *SEA responsibilities.* (1) An SEA shall submit annually to the Secretary data on—

(i) The use of chapter 2 funds by the SEA and LEAs;

(ii) The types of services provided; and

(iii) The children to whom services were provided.

(2) In fiscal year 1992, the SEA shall—

(i) Evaluate the effectiveness of State and local programs conducted under this part;

(ii) Submit the evaluation to the State advisory committee for review and comment;

(iii) Make the evaluation available to the public; and

(iv) Submit a copy of the evaluation and a summary of the LEA's reports under paragraph (a)(1) of this section to the Secretary.

(3) The SEA shall provide other information to the Secretary as may be required for fiscal audit and program evaluation.

(Approved by the Office of Management and Budget under control number 1810-0053)

(Authority: 20 U.S.C. 2932(a)(6)-(7), 2943(a)(4), 2973)

§ 298.16-298.20 [Reserved]

Subpart C—Fiscal Requirements That a State or Local Educational Agency Must Meet

§ 298.21 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 298.22, the Secretary pays a State its full allocation of funds under this part if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provisions of free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or of the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is

fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending June 30, 1987.

(3)(i) *Expenditures to be considered.*

The expenditures the Secretary considers in determining a State's compliance with the maintenance of effort requirement in this paragraph are State and local expenditures for free public education. These include expenditures for administrative, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Expenditures not to be considered.* The Secretary does not consider the following expenditures in determining a State's compliance with the maintenance of effort requirement in this paragraph:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures of Federal funds.

(b) *Failure to maintain effort.* (1) If a State fails to maintain effort and a waiver under § 298.22 is not appropriate, the Secretary reduces the State's allocation of funds under this part in the exact proportion by which the State fails to meet 90 percent of both the State's combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) (the year that caused the State's failure to maintain effort) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2971(a))

298.22 Waiver of the maintenance of effort requirement.

(a) *Waiver request.* A State that has not maintained its fiscal effort as required in § 298.21(a) may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the combined fiscal effort per student and the aggregate expenditures for the two fiscal years being compared; and

(2) A description of the circumstances at the State considers to be exceptional or uncontrollable.

(b) *Secretary's criteria.* (1) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 298.21(a) if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances.

(2) Exceptional or uncontrollable circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the State; or

(iii) Other exceptional or uncontrollable circumstances.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(c) *Effect of a waiver.* (1) If the Secretary grants a waiver under paragraph (b) of this section, the Secretary allocates to the affected State full allocation of chapter 2 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (whichever the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) as the measure for the year for which the State needed a waiver to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

Approved by the Office of Management and Budget under control number 1810-0053)

(Authority: 20 U.S.C. 2971(a))

298.23 Supplement-not-supplant.

An SEA or LEA that receives chapter 2 funds—

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under chapter 2, be made available from non-Federal sources; and

(b) May not use chapter 2 funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2971(b))

§§ 298.24–298.30 [Reserved]**Subpart D—How Children Enrolled in Private Schools Participate****§ 298.31 Responsibility of SEAs and LEAs.**

(a)(1) An LEA shall provide children enrolled in private schools in that LEA with secular, neutral, and nonideological services, materials, and equipment or other benefits that will ensure equitable (as compared to children enrolled in public schools) participation of private school children in the purposes and benefits of chapter 2 in accordance with the requirements in §§ 298.32–298.37 and section 1572 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and needs of private school children in the school district of the LEA.

(3) The LEA shall exercise administrative direction and control over chapter 2 funds and property that benefit children enrolled in private schools.

(4)(i) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, association, agency, or corporation that, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) An SEA shall—

(i) Ensure that each LEA complies with the requirements of §§ 298.32–298.37; or

(ii) If no chapter 2 project is carried out by an LEA, make arrangements—such as through contracts with nonprofit agencies or organizations—under which children in private schools in that LEA are provided with services and materials to the extent that would have occurred if the LEA had received chapter 2 funds.

(2) If an SEA conducts instructional programs or personnel training programs, it shall comply with these requirements as if it were an LEA.

(c) Under sections 1522(a)(3)(B) and 1533 (a)(1)(B) of the Act, an application by an SEA or LEA must contain the planned allocation of funds required to implement section 1572.

(d) In accordance with section 1572(a)(1) of the Act, the regulations in this subpart only apply to children enrolled in private, nonprofit elementary and secondary schools.

(Authority: 20 U.S.C. 2972)

§ 298.32 Consultation with private school officials.

In order to receive chapter 2 funds, an LEA shall—

(a) Contact annually appropriate officials from private schools within the area served by the LEA to determine whether those officials desire that their children participate in the chapter 2 program; and

(b) With respect to those officials in schools with children who will participate, consult regarding the development and implementation of the chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program.

(Authority: 20 U.S.C. 2922(b)(1), 2972)

§ 298.33 Needs, number of children, and types of services.

An LEA shall determine the following matters on a basis comparable to that used by the LEA in providing for participation of public school children:

(a) The needs of children enrolled in private schools.

(b) The number of those children who will participate in the chapter 2 program.

(c) The chapter 2 services that the LEA will provide to those children.

(Authority: 20 U.S.C. 2972)

§ 298.34 Factors used in determining equitable participation.

(a) *Equal expenditures.* (1) Expenditures for chapter 2 programs for children enrolled in private schools must be equal (consistent with the number of children to be served) to expenditures for chapter 2 programs for children enrolled in the public schools of an LEA, taking into account the needs of the individual children and other factors that relate to such expenditures.

(2) Except as provided in § 298.14(b)(1)(ii), in determining whether expenditures are equal under paragraph (a)(1) of this section, an LEA—

(i) May not take into account the extent to which children in private schools generated a portion of the LEA's allocation under § 298.7(b)(2)(ii); but

(ii) May take into account differences in the costs per child of meeting the

needs of the individual children to be served and other factors that relate to these expenditures, as provided in paragraph (a)(1) of this section.

(b) *Services on an equitable basis.* (1) In addition to meeting the equal expenditures requirement in paragraph (a) of this section, an LEA shall provide for the participation in the chapter 2 program of children enrolled in private schools on an equitable basis.

(2)(i) In determining whether an LEA is providing for participation on an equitable basis, the services provided to private school children and the services provided to public school children are considered.

(ii) If an LEA uses chapter 2 funds to concentrate programs for public school children on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable opportunities for participation by children enrolled in private schools who—

(A) Have the same needs as the public school children to be served; and

(B) Are in that group, attendance area, or grade or age level.

(iii) If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, an LEA shall provide chapter 2 services for the private school children that address their needs on an equitable basis.

(Authority: 20 U.S.C. 2972)

§ 298.35 Funds not to benefit a private school.

(a) An LEA may only use chapter 2 funds to provide services that supplement, and in no case supplant, the level of services that would, in the absence of chapter 2 services, be available to children enrolled in a private school.

(b) An LEA shall use chapter 2 funds to meet the needs of children enrolled in a private school, but not for the purpose of aiding the private school.

(Authority: 20 U.S.C. 2972)

§ 298.36 Equipment and supplies.

(a) To meet the requirements of section 1572(c) of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with chapter 2 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for chapter 2 purposes;

(2) Are used for secular, neutral, and nonideological purposes; and

(3) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for chapter 2 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than chapter 2 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2972)

§ 298.37 Construction.

(a) No chapter 2 funds may be used to perform repairs, minor remodeling or construction of private school facilities.

(b) An LEA may use chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities under this subpart.

(Authority: 20 U.S.C. 2972)

§ 298.38 Bypass.

(a) The Secretary implements a bypass if an SEA or LEA—

(1) Is prohibited by law from providing chapter 2 services for private school children on an equitable basis; or

(2) Has substantially failed, or is unwilling, to provide services for private school children on an equitable basis.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives an SEA's or LEA's responsibility for providing chapter 2 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the cost of these services, including any administrative costs, from the appropriate allotment of chapter 2 funds provided to the State.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2972 (d), (e), (g))

§§ 298.39–298.40 [Reserved]

PART 76—STATE-ADMINISTERED PROGRAMS

2. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

§ 76.1 [Amended]

3. Section 76.1 is amended by removing paragraph (c) and by revising the authority citation at the end of the section to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

4. Section 76.401 is amended by adding a new paragraph (a)(9) to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

(9) Federal, State, and Local Partnership for Educational Improvement.

* * * * *

5. Section 76.563 is revised to read as follows:

§ 76.563 Restricted indirect cost rate—programs covered.

If a State or a subgrantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the State or subgrantee shall use a restricted indirect cost rate computed under 34 CFR 75.564–75.568.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2931(a), 2974(b))

§ 76.734 [Amended]

6. Section 76.734 is amended by removing "Unless a longer period is required under 34 CFR part 74, a" and adding "A" in its place.

§§ 76.2, 76.50, 76.51, 76.401, 76.503, 76.532, 76.533, 76.534, 76.600, 76.703, 76.704, 76.707, and 76.760 [Amended]

7. The authority citations for the following sections are amended by adding ", 2974(b)" before the final parenthesis:

§ 76.2
§ 76.50
§ 76.51
§ 76.401
§ 76.500
§ 76.532
§ 76.533
§ 76.534
§ 76.600
§ 76.703
§ 76.704
§ 76.707
§ 76.760

§ 76.125 [Amended]

8. The authority citation for § 76.125 is amended by adding, before "and", "2974(b)".

76.707 [Amended]

9. The table in § 76.707 is amended by moving "under the cost principles in appendices C-F to 45 CFR part 74" in paragraph (h).

10. The following undesignated cross-references are removed from part 76:

(a) The cross-references following 76.50, 76.305, 76.530, 76.702, and 76.734.

(b) The cross-references preceding 76.140-76.142, 76.600, 76.682-76.690, 76.720-76.722, 76.730-76.734, 76.770-76.772, and 76.900-76.910.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

11. The authority citation for part 77 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 284(b), and 3474, unless otherwise noted.

§ 7.1 [Amended]

12. The authority citation following § 7.1 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 284(b), and 3474)

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes**Section 298.1—Purpose**

Comment: A number of commenters requested clarification of the terms "initial funding" in § 298.1(a) and "continuing source" in § 298.1(b). The commenters questioned whether the language in § 298.1(a) limits the period of time for which an activity can be conducted with Chapter 2 funds or whether Chapter 2 is to be a continuing source of funding for an activity.

Discussion: There is no specific limitation on the length of time Chapter 2 funds may be used to support a program. Section 298.1 accurately states the purpose of Chapter 2 as articulated in section 1501(b) of the Act: To provide the initial funding to implement promising educational programs that can be supported by State and local sources of funding after those programs are demonstrated to be effective; to provide a continuing source of innovation, improvement, and support for library and instructional materials; to meet the special educational needs of at-risk and high-cost students; to enhance the quality of teaching and learning through effective schools programs; and to allow SEAs and LEAs to meet their educational needs and priorities for targeted assistance. No one part of this section takes precedence over any other part. Rather, it offers options to an LEA. The LEA must, however, use chapter 2 funds for a targeted assistance program as described in section 1531(b) of the Act.

Changes: None.

Section 298.2—Applicable Regulations

Comment: Several commenters recommended that the final regulations

clarify the extent to which construction is an allowable cost under chapter 2.

Discussion: Section 76.533 of the Education Department General Administrative Regulations (EDGAR) sets out the general rule concerning construction—namely, that no SEA or LEA may use funds "for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program." With one limited exception, neither the chapter 2 statute nor the final regulations permits the use of chapter 2 funds for acquisition of real property or for construction. Therefore, under § 76.533, chapter 2 funds generally may not be used for those purposes. The exception is contained in section 1572(a) of chapter 2 and § 298.37 of the final regulations. Those provisions authorize an LEA to use chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities to provide equitable chapter 2 services to private school children. In this limited circumstance, the provisions of §§ 76.600 and 75.601-75.602, 75.609-75.611, 75.613, and 75.616 govern how construction is performed.

Changes: None.

Comment: A number of comments were received on § 298.2 concerning the applicability of selected sections of the Education Department General Administrative Regulations (EDGAR). One commenter recommended that the section be deleted because the commenter believed the Education Consolidation and Improvement Act (ECIA) removed the requirement for chapter 2 to abide by EDGAR. One commenter applauded the use of EDGAR to provide direction and clarification. One commenter recommended that each State be allowed to use its own standards for fiscal control and accountability of chapter 2 funds. Several commenters recommended that § 76.730 of EDGAR not be made applicable since the commenters believed its inclusion would be duplicative of other fiscal control requirements in chapter 2 and would be unnecessarily burdensome.

Discussion: Congress intended, when it enacted chapter 2 of the ECIA, "to greatly reduce the enormous administrative and paperwork burden imposed on schools at the expense of their ability to educate children." In keeping with this purpose, the Department decided not to make the provisions of EDGAR applicable to chapter 2 of the ECIA, even though the statute did not preclude their applicability. During the seven years that EDGAR has not been applicable to chapter 2 of the ECIA, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. In addition, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions of EDGAR. Further, Congress identified lack of accountability as one of the primary deficiencies under chapter 2 of the ECIA. S. Rep. 222, 100th Cong., 1st Sess. 25 (1987). As a result, in order to provide additional guidance and to ensure that chapter 2 funds are spent only for authorized program purposes, the Secretary has made certain provisions of EDGAR applicable to programs under this part. In determining

which provisions to apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs.

The Secretary has not made part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applicable to programs under this part. Rather, § 298.2(b) of the final regulations requires States to have their own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must meet three general criteria, set forth in §§ 298.2(B)(1) (i)-(iii), that are designed to ensure the minimal standards necessary for proper management of chapter 2 funds. A State may adopt new requirements, or may use requirements applicable to the use of its own funds. In the alternative, a State may apply the provisions in part 80 and certain provisions in part 75 to satisfy this requirement. A State has complete discretion to choose among these alternatives. A State's procedures do not have to be approved by the Department, but must be available for Federal inspection. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) apply, including the due process provisions in that part.

In addition, the Secretary has made applicable a limited number of provisions from part 76 (State-Administered Programs). For the most part, the applicable sections are statutorily required. For example, because chapter 2 contains a supplement-not-supplant requirement, § 76.563 applies, which requires an SEA or LEA to use a restricted indirect cost rate, computed in accordance with 34 CFR 75.564-75.568, if the SEA or LEA charges indirect costs to chapter 2. Similarly, the recordkeeping requirements in § 76.730, to which several commenters objected as burdensome and duplicative of other fiscal requirements, are required by section 437(a) of GEPA, made applicable to programs under this part by section 1575 of chapter 2. Section 76.730, which specifies what records an SEA or LEA must keep, does not duplicate other chapter 2 requirements and is not unduly burdensome. A few of the applicable sections are not required by statute but provide important rights to SEAs and LEAs that would not be available without the regulations. For example, §§ 76.703-76.704 apply, which permit States and subgrantees, respectively, to begin to obligate chapter 2 funds on the date their applications are submitted in substantially approvable form.

The Secretary had also made applicable selected definitions in part 77 (Definitions That Apply to Department Regulations), this due process procedures in part 78 (Education Appeal Board), the enforcement provisions in part 81 (General Education Provisions Act—Enforcement), and the debarment and suspension provisions in part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

The Secretary believes that making selected provisions of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs. The referenced provisions of EDGAR apply to other State-administered education programs. The EDGAR provisions have been recently reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed.

Changes: To ensure the least possible burden on States, the Secretary has removed the proposed requirement in § 298.2(b)(1) that the States "formally adopt" their fiscal and administrative requirements for chapter 2. Instead, States are only required to "have" those requirements. Further, to avoid any misunderstanding, the Secretary has incorporated, in § 298.2(b)(2), all of the States' options for fiscal and administrative requirements, including use of requirements that apply to the States' own funds. Some States were concerned that OMB Circular A-87 not be made applicable to the chapter 2 program. The Secretary emphasizes that under the chapter 2 regulations, OMB Circulars A-87 and A-102, which are incorporated in 34 CFR part 80, do not apply to the Chapter 2 program unless a State chooses to do so.

Several conforming changes that are not inconsistent with the proposed regulations have also been made. First, § 76.3 concerning the Department's general grant regulations has been excluded because regulations proposing to delete it from part 76 have not become final. Second, § 76.617 concerning compliance with the Coastal Barrier Resource Act has been deleted because regulations proposing to add it to part 75 have not become final. Third, §§ 76.670-76.677 concerning procedures for implementing a bypass authorized by section 1572(d)-(i) of chapter 2 were inadvertently omitted from the proposed regulations and have been added. Finally, part 81 concerning enforcement provisions in CEPA has been added because it has become final since publication of the chapter 2 proposed regulations.

Comment: None.

Discussion: These final regulations make applicable 34 CFR part 82—New Restrictions of Lobbying and Part 85—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants). The regulations in part 82 were adopted on February 28, 1990 (55 FR 6736). The regulations in part 85 were adopted in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organizations for nonprocurement programs of the U.S. Government. The Department implements this Executive Order in subparts A-E of part 85 (regular debarment and suspension) (53 FR 13101 (May 28, 1988)). Second, under the Drug Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension

regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in subpart F of part 85 (Drug-Free Debarment and Suspension) 54 FR 4956 (Jan. 31, 1989)).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subtier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator of this program that would constitute grounds for debarment, the debarment official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual and paid for the individual's services with program funds, the Department would consider issuing a Program Determination Letter to the State to recover the program funds. Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they only apply to principals. The Department will submit to OMB for approval a new form that would only apply to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submitted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees. However, pending approval of the new forms, the Department will use the current forms with the understanding that they only apply to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs such as chapter 2 to grantees that fail to meet the drug-free workplace requirements. Regarding the State certifications required under the drug-free debarment and suspension regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

Changes: Section 200.2(a)(1) has been revised to reference the applicability of 34 CFR parts 82 and 85.

Section 298.3—Definitions

Comment: A number of commenters pointed out that the proposed regulations permit more than one definition of equipment. For example § 298.3(a) of the proposed regulations states that the definition of equipment in section 1471 of the Act applies. However, § 298.2(b)(2) permits a State to adopt the provisions in 34 CFR part 80, which contains a broader definition. Several commenters recommended that the definition which allows the greatest flexibility should be selected for inclusion in the final regulations.

Discussion: These regulations use the definition of equipment found in section 1471 of the Act. However, for purposes of accountability, States are free to use the definition in 34 CFR part 80 if they wish. This approach maintains the consistency of the regulations with the chapter 2 statute while providing States with maximum flexibility in accounting for the use of Federal funds.

Changes: None.

Comment: A number of commenters suggested that the definition of "educational personnel" in § 298.3(c) be expanded to include school social workers and school psychologists.

Discussion: The definition of "educational personnel" was included in the proposed regulations to encompass a number of types of school employees who could participate in the benefits of chapter 2. The Secretary believes that this can be accomplished by including school social workers and school psychologists in §§ 298.6(c)(3) and 298.12(a)(4) and deleting the definition from the regulations. However, the lists in §§ 298.6(c)(3) and 298.12(a)(4) as modified are not intended to be exclusive lists. Other type of educational personnel may be included in chapter 2 services as appropriate.

Changes: Sections 298.6(c)(3) and 298.12(a)(4) have been changed to specifically include school social workers and school psychologists. The definition in § 298.3(c) has been deleted.

Section 298.4—State Advisory Committee

Comment: One commenter noted that the reference in § 298.4(b) to the State Board of Education as the State Advisory Committee is unnecessary since a State Board of Education meeting all the requirements could obviously serve as the committee. The

commenter felt that specifically referencing a specific organization encourages limiting the advisory or public input process. The commenter recommended the elimination of the reference.

Discussion: The Secretary agrees that any existing organization that meets the requirements of section 1522(a)(2) of the Act may be the State Advisory Committee and that it is unnecessary to make specific reference to a State Board of Education.

Changes: The phrase "Including a State Board of Education" has been deleted from § 98.4(b).

Comment: One commenter recommended that a private school representative knowledgeable about chapter 2 should be a member of the State Advisory Committee.

Discussion: Section 298.4 references section 1522(a)(2) of the Act, which requires that the State Advisory Committee include individuals representative of private elementary and secondary school children.

Changes: None.

Section 298.6—LEA Applications

Comment: A number of commenters noted that there is no explicit requirement in § 98.6(c)(1) that the parents of children enrolled in private schools as well as private school personnel be included in the consultation process required by section 1533(a)(5) of the Act.

Discussion: Section 1533(a)(5) of the Act requires an LEA to provide, "in the allocation of [Chapter 2] funds * * * and in the design, planning, and implementation of [Chapter 2] programs, for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, [and] with teachers and administrative personnel in such schools."

" * * * This requirement does not distinguish between parents of public and private school children. Thus, all parents are to be included in the consultation process. This requirement also includes private school personnel. Moreover, section 1572(a) of the Act and § 98.32 of the final regulations address consultation with appropriate private school officials."

Changes: Section 298.6(c)(1) has been revised to clarify that the consultation requirement in section 1533(a)(5) of the Act applies to parents of public and private school children. Accordingly, it follows in § 98.6(c)(2) that teachers and administrative personnel in public and private schools would also be consulted.

Comment: A number of commenters requested that school social workers and school psychologists be specifically added to the list in § 298.6(c)(3) of other groups involved in the implementation of chapter 2.

Discussion: The Secretary agrees that specifically adding school social workers and school psychologists to the list is appropriate. The list as modified, however, is not meant to be exclusive. An LEA may also consult with other groups involved in the implementation of chapter 2 if appropriate.

Changes: Section 298.6(c)(3) has been changed to include specifically school social workers and school psychologists.

Section 298.7—Allocation of Chapter 2 Funds to LEAs

Comment: Many commenters commented on § 298.7 of the proposed regulations concerning the allocation of Chapter 2 funds to LEAs. Specifically, the commenters objected to § 298.7(b)(2)(ii), which requires an SEA to provide adjusted allocations only to LEAs that serve the greatest numbers or percentages of children living in areas with high concentrations of low-income families, children from low-income families, or children living in sparsely populated areas. Some commenters believed that the regulation is unduly restrictive in limiting adjusted allocations only to LEAs that serve the greatest numbers or percentages of high-cost children. The commenters recommended that all LEAs with eligible children be allowed to receive funds. The commenters suggested that the State Advisory Committee be given the authority to allocate chapter 2 funds according to the best interests of the State. Similarly, other commenters criticized limiting the categories of high-cost children because many children whose education imposes a higher than average cost per child would not be included. The commenters recommended that a State be allowed to include other factors than those listed in § 298.7(b)(2)(ii) in calculating its formula for distributing chapter 2 funds to LEAs.

Discussion: Section 1512(a) of the Act sets out the general rule for distributing chapter 2 funds to LEAs. It requires an SEA to adjust its distribution formula "to provide higher per pupil allocations to [LEAs] which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as" children living in areas with high concentrations of low-income families, children from low-income families, and children living in sparsely populated areas. Section 1512(b)(2)(A) of the Act prescribes how the SEA must adjust its formula. In doing so, it contains two notable differences from section 1512(a): (1) It requires an SEA to distribute the "high-cost" funds *only* to LEAs with the greatest numbers or percentages of "high-cost" children; and (2) it limits the "high-cost" factors that an SEA may use to those in the statute.

As stated in § 298.7(b)(2)(ii) of the final regulations, the Secretary believes that the more specific provisions in section 1512(b)(2)(A) take precedence over the general rule in 1512(a). This decision is required by certain requirements in the Act. First, section 1512(b)(2)(B) of the Act requires the Secretary to review and approve a State's criteria "based on the factors set forth in [1512(b)(2)](A)." Second, section 1522(a)(9) requires that a State's application indicate: (1) How the State will adjust its formula to comply with section 1512(b)(2); (2) how children under section 1512(b)(2)(A) are defined; (3) the basis on which a determination of the LEAs under section 1512(b)(2)(A) is made; and (4) the percentage of the State grant that the State proposes to allot on an adjusted basis. Given that Congress chose to require this specific information in a State's chapter 2 application, it seems clear Congress intended the provisions in section 1512(b)(2)(A) to apply.

This interpretation of Congress' intent is supported, in part, by the legislative history of section 565(a) of chapter 2 of the ECIA, the predecessor of section 1512(a). Under the Department's interpretation of section 565(a), an SEA could distribute "high-cost" funds to any LEA that had "high-cost" children. Dissatisfied with the Department's interpretation, the conferees indicated in the conference report accompanying technical amendments to the ECIA that "[i]t is the intent of the conferees that section 565(a) of the [ECIA] be interpreted such that State chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number of percentage of such children." H.R. Rep. 574, 98th Cong., 1st Sess. 15 (1983). Section 1512(b)(2)(A) requires this interpretation.

Despite a more restrictive statutory provision, the Secretary wishes to emphasize that States continue to have considerable flexibility in adjusting their formulas. A State may decide what percentage of chapter 2 funds is to be allocated on an adjusted basis. A State may also decide, within the statutory categories, how to define "high-cost" children and which categories to use.

Changes: None.

Section 298.12—Targeted Assistance Programs

Comment: A number of commenters recommended that the regulations clarify the language in section 1532(b) of the Act concerning the authority for SEAs and LEAs to enter into contracts and grants. The commenters expressed concern that section 1532(b) appears to limit their ability to enter into contracts with profit-making organizations and individuals, which would severely hamper a number of the activities they would otherwise conduct.

Discussion: Section 1532(b) of the Act states that, "[i]n order to conduct the activities authorized by this part, each State or local educational agency may use funds reserved for this part to make grants to and to enter into contracts with local educational agencies, institutions of higher education, libraries, museums, and other public and private non-profit agencies, organizations, and institutions." The conference report accompanying the Act indicates that the conference committee agreed to include this authority but specifically amended it to "limit [] private agencies to only those which are nonprofit." H.R. Rept. 567, 100th Cong., 2d Sess. 349 (1988).

The Secretary cannot waive or amend the statutory provision. The Secretary, however, interprets this provision to apply only to grants or contracts to operate targeted assistance programs. It does not limit an SEA's or LEA's authority to contract with an individual or a for-profit corporation to purchase specific goods or services—for example, to purchase materials to provide specific services, to secure audit services, or to lease conference space—to assist the SEA or LEA in carrying out a targeted assistance program.

Changes: None.

Comment: A number of commenters requested that § 298.12(a)(2) use the language of the Act to describe the programs to acquire and use instructional materials. The commenters pointed out that §§ 298.12(a)(1), 298.12(a)(3), and 298.12(a)(4) used the language in section 1531(b). They contended that to edit § 298.12(a)(2) might limit the types of programs and SEA or LEA might conduct under this area of targeted assistance.

Discussion: In order to avoid any confusion concerning the programs authorized under section 1531(b) of the Act, the Secretary agrees that it is appropriate to use the exact language of the Act in all of the areas of targeted assistance listed in § 298.12.

Changes: Sections 298.12(a)(2), 298.12(a)(5) and 298.12(a)(6) are modified accordingly.

Comment: Several commenters addressed the provision in § 298.12(b) concerning purchasing equipment under chapter 2. One commenter recommended that only computer hardware be allowable.

One commenter felt that the Act implicitly authorizes expenditures for equipment and, therefore, § 298.12(b) is unnecessary. One commenter believed that the purchase of equipment under chapter 2 should be coordinated with other Federal assistance programs. One commenter requested that the types of equipment that are permissible be pointed out. One commenter recommended that administrative and management technology expenditures be allowed.

Discussion: Under section 577(1) of chapter 2 of the ESEA, an LEA was authorized to use chapter 2 funds to purchase "instructional equipment and materials suitable for use in providing education in academic subjects" So long as the equipment met those requirements, it did not need to be tied to any other chapter 2 activity. Unlike section 577(1) of chapter 2 of the ESEA, section 1531(b)(2) of the Act does not authorize the use of chapter 2 funds to purchase general instructional equipment as a program in and of itself—that is, the purchase of general instructional equipment is not a "program," per se. SEAs and LEAs may only make such equipment purchases with chapter 2 funds if the equipment is used as a part of a chapter 2 program to meet one of the areas of targeted assistance in section 1531(b). As a result, § 298.12(b) is necessary because it states the basic rule concerning purchasing instructional equipment. Moreover, because equipment must be part of a targeted assistance program, it is unlikely that

expenditures for administrative and management technology would be allowed.

Changes: None.

Section 298.13—Use of Funds by SEAs

Comment: Several commenters noted that § 298.13(b)(2)(iii) concerning a waiver of the requirement to expend 20 percent of the funds reserved for State use for effective schools programs substitutes an "SEA" for the word "State" in the Act. They contend that this could be detrimental to an SEA in applying for a waiver because the State as a whole may be spending more funds for effective schools programs than the SEA.

Discussion: Section 1521(b)(2)(B) of chapter 2 authorizes a State to request a waiver of the requirement to expend 20 percent of the chapter 2 funds reserved for the State's use for effective schools programs if the "State is spending from non-Federal sources an amount equal to twice as much" as the State is required to spend from chapter 2. The Secretary did not intend to restrict the funds that could be considered in granting a waiver request to only funds expended by the SEA.

Changes: Section 298.13(b)(2)(iii) has been changed to clarify that the non-Federal funds expended for effective schools programs may be funds expended by the State, not merely the SEA.

Comment: Several commenters requested clarification of the time period in which the SEA could spend the 25 percent of its chapter 2 funds reserved for administering chapter 2. Specifically, the commenters requested that the time period for those expenditures coincide with the period for which the funds are available for use.

Discussion: Section 1521(b) prohibits an SEA from expending "more than 25 percent of funds available [to the State] in any fiscal year" for State administration of programs under this part. The Secretary interprets the phrase "in any fiscal year" to clarify the amount of funds on which the 25 percent limitation is calculated—that is, the funds reserved for the State's use from a given fiscal year's chapter 2 grant. An SEA may expend no more than 25 percent of that amount for State administration. In accordance with section 412(b) of GEPA, however, the SEA may expend those funds during the fiscal year for which they were appropriated or during the succeeding fiscal year.

Changes: None.

Section 298.15—Evaluations and Reports

Comment: A number of commenters responded to § 298.15 on evaluations and reports. For commenters recommended that the types of chapter 2 services provided to private school children be specifically identified in the annual report. One commenter suggested that the services provided by pupil services personnel be included in the annual report. One commenter objected to the provision in § 298.15(b)(3) that an "SEA shall provide other information to the Secretary as may be required for program evaluation" because this provision could cause an unreasonable burden.

Discussion: Section 298.15 accurately reflects the evaluation and reporting requirements in sections 1522(a)(5)–(7), 1523(a)(4), and 1573 of the Act. The Secretary believes that the services provided by pupil services personnel would be required to be listed under § 298.15(b)(1)(ii)—the types of services provided. The Secretary does not believe it is necessary to require an SEA to distinguish between the services provided to public and private school children, although the SEA is free to do so. Finally, the provision in § 298.15(b)(3) that an "SEA shall provide other information to the Secretary as may be required for fiscal audit and program evaluation" is specifically required by section 1522(a)(7) of the Act.

Changes: None.

Section 298.23—Supplement-Not-Supplant

Comment: A number of commenters suggested that § 298.23 be expanded to include examples of how activities and programs funded with non-Federal funds could be supplemented with chapter 2 funds without supplanting the non-Federal funds.

Discussion: Section 298.23 of the final regulations accurately states the supplement-not-supplant requirement in section 1571(b) of the Act. Application of this requirement is dependent upon the specific circumstances in an SEA or LEA and therefore makes the kind of generalizations needed for regulations difficult. The Secretary appreciates the need for additional guidance in this area, however, and will include examples of specific instances of supplanting in a revised nonregulatory guidance document.

Changes: None.

[FR Doc. 90-8818 Filed 4-17-90 8:45 am]

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DEPARTMENT OF EDUCATION

4 CFR Part 298

IN 1810-AA60

Federal, State, and Local Partnership
for Educational Improvement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing chapter 2 of title I of the Elementary and Secondary Education Act of 1965, as amended. These regulations implement an amendment to chapter 2 (contained in the National Literacy Act of 1991) that authorizes training programs for teachers and school counselors to identify, particularly in the early grades, students who may be at risk of illiteracy in the adult years.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: E. E. Wickline, Director, School Effectiveness Division, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 2040), Washington, DC 20202-6140. Telephone: (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 22 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: In the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, P.L. 100-297, Congress enacted chapter 2 of title I of the Elementary and Secondary Education Act of 1965, entitled "Federal, State, and Local Partnership for Educational Improvement." To make chapter 2 a vehicle for school improvement, with an "identifiable time of improving quality and promoting innovation" (see H.R. Rep. No. 95, 100th Cong., 1st Sess. 50 (1987)), Congress identified six broad purposes for which Chapter 2 funds may be targeted: Programs for at-risk students; acquisition and use of instructional materials; schoolwide improvement and effective schools programs; training and professional development for

educational personnel; programs to enhance the personal excellence of students and student achievement; and innovative projects to enhance the educational program and climate of the school.

In section 302 of the National Literacy Act of 1991, Public Law 102-73, Congress amended section 1531(b) of chapter 2 (20 U.S.C. 2941) to add a seventh purpose for which chapter 2 funds may now be targeted: Training programs to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students who may be at risk of illiteracy in their adult years. Subject to the requirement to target funds on one or more of the seven areas, State and local educational agencies retain the flexibility to decide how to use their chapter 2 funds. The final regulations in this document amend § 298.12(a) of the chapter 2 regulations to incorporate this statutory change.

This statutory and regulatory change authorizes activities that can help foster the aims of AMERICA 2000, the President's strategy to help America move itself toward the six National Education Goals.

Specifically, local educational agencies that choose to use their funds for this newly authorized purpose will be working toward fulfillment of:

- Goal 2, by identifying students with reading difficulties early, thus reducing the risk that they will drop out before completing high school;
- Goal 3, by ensuring that all children are equipped with the reading skills they need to help them leave grades four, eight, and twelve having demonstrated competency in challenging subject matter; and
- Goal 5, by helping all children grow up to be literate adults who possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate a statutory change, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations merely incorporate a statutory change and do not impose excessive burdens or require unnecessary Federal supervision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in this order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and Secondary Education, Grant programs—education, Private schools, Reporting and recordkeeping requirements, State administered programs.

(Catalog of Federal Domestic Assistance Number 84.151, Federal, State, and Local Partnership for Educational Improvement)

Dated: December 23, 1991.

Lamar Alexander,
Secretary of Education.

The Secretary amends part 298 of title 34 of the Code of Federal Regulations as follows:

**PART 298—FEDERAL, STATE, AND
LOCAL PARTNERSHIP FOR
EDUCATIONAL IMPROVEMENT**

1. The authority citation for part 298 continues to read as follows:

Authority: 20 U.S.C. 2911-2952, 2971-2976, unless otherwise noted.

2. Section 298.12 is amended by redesignating paragraphs (a) (5) and (6) as paragraphs (a) (6) and (7), respectively, and adding a new paragraph (a)(5) to read as follows:

§ 298.12 Targeted assistance programs.

(a) . . .

(5) Programs of training to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students with reading and reading-related problems that place those students at risk for illiteracy in their adult years.



APPENDIX IV

ESEA Chapter 2

Elementary & Secondary Education Act

Federal Nonregulatory Guidelines



CHAPTER 2

**OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT
OF 1965, AS AMENDED**

**NONREGULATORY GUIDANCE FOR
FEDERAL, STATE, AND LOCAL PARTNERSHIP
FOR EDUCATIONAL IMPROVEMENT**



**U.S. Department of Education
Office of Elementary and Secondary Education
February, 1991**

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PREFACE

Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, replaces Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). The purposes of programs under Chapter 2 are--

(1) to provide the initial funding to enable State and local educational agencies to implement promising educational programs that can be supported by state and local sources of funding after such programs are demonstrated to be effective;

(2) to provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

(3) to meet the special educational needs of at risk and high cost students;

(4) to enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

(5) to allow State and local educational agencies to meet their educational needs and priorities for targeted assistance.

The basic responsibility for the administration and supervision of Chapter 2 programs rests with the State educational agencies (SEAs). Local educational agencies (LEAs) are responsible, however, for the design and implementation of their Chapter 2 projects.

The Department published final regulations implementing Chapter 2 of the ESEA in 55 FR 14810 (April 18, 1990) as 34 CFR Part 298. The guidance in this document reflects the changes to the Chapter 2 statute and regulations. This guidance also responds to new questions raised by State and local officials.

Because SEAs have the responsibility for administering and supervising Chapter 2 programs, the guidance in this document is addressed primarily to SEAs. LEAs may rely on this guidance unless it is inconsistent with guidance provided by the SEA. This document does not impose any requirements beyond those in the Chapter 2 statute and regulations. While SEAs may wish to consider the guidance in this document in developing their own guidelines and standards, they are free to develop alternative approaches that are consistent with the Chapter 2 statute and regulations but may be more in keeping with particular needs and circumstances. However, compliance with the guidance in this document shall be deemed compliance with the statute and regulations by Department of Education officials, including the Inspector General. In other words, this document contains acceptable, but not exclusive, guidance concerning Chapter 2 requirements.

PURPOSE

Statutory Requirement

Section 1501(b) of Chapter 2, 20 U.S.C. 2911(b).

Regulatory Requirement

Section 298.1 of the regulations.

Questions and Answers

1. May preschool children receive Chapter 2 services?

Yes. Section 1531(b)(6) of Chapter 2 authorizes "innovative projects which would enhance the educational program and climate of the school, including ... early childhood education programs...."

DEFINITIONS

Statutory Requirement

Section 1471 of the ESEA, 20 U.S.C. 2891

Regulatory Requirement

Section 298.3 of the regulations.

1. What is the definition of equipment?

The definition of "equipment" is contained in Section 1471 of Chapter 1 of the ESEA and includes "machinery, utilities, and building equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials." However, for purposes of accountability, States are free to use the broader definition of equipment in 34 CFR 80.32 of EDGAR if they wish.

GENERAL RESPONSIBILITIES OF STATE AND
LOCAL EDUCATIONAL AGENCIES

Statutory Requirements

The following sections of Chapter 2 contain the basic responsibilities of State and local educational agencies:

Section 1501(c) of Chapter 2, 20 U.S.C. 2911(c).

Section 1522(a)(1) of Chapter 2, 20 U.S.C. 2932(a)(1).

Section 1533(c) of Chapter 2, U.S.C. 2943(c).

Regulatory Requirement

Section 298.11 of the regulations.

Questions and Answers

1. Is an SEA required to monitor its LEAs on-site?

Since the beginning of Chapter 2 of the ECIA, an SEA has had responsibility for the administration and supervision of Chapter 2 programs in the State. The SEA's administrative and supervisory responsibilities include ensuring compliance with the provisions of Chapter 2. How an SEA ensures compliance, however, is the SEA's decision. Section 1522(a)(8) of Chapter 2 authorizes an SEA to monitor its LEAs to ensure their compliance. Indeed, with respect to certain kinds of requirements for which the SEA has responsibility for ensuring compliance, on-site monitoring may be the best method. However, Section 1522(a)(8) does not specifically require on-site monitoring.

2. If an SEA monitors an LEA, should the SEA also monitor services to private school children provided by the LEA?

Yes. The SEA is responsible for the administration and supervision of programs assisted by Chapter 2. The benefits provided to private school children with Chapter 2 funds are a part of the LEA's program. If the services to private school children are provided under a by-pass, however, the by-pass contractor would monitor those services, not the SEA.

3. How can an SEA provide technical assistance to ensure compliance without influencing the decisionmaking processes of its LEAs concerning their expenditures of Chapter 2 funds?

Section 1522(a)(8) of Chapter 2 requires a State to assure in its application that "apart from technical and advisory assistance and monitoring compliance with [Chapter 2], the [SEA] has not exercised and will not exercise any influence in the decisionmaking processes of [LEAs]...." This assurance must be read in conjunction with the provision in Section 1533(c) of Chapter 2 that grants each LEA "complete discretion," subject only to the provisions of Chapter 2, in determining how to distribute its Chapter 2 funds to accomplish the purposes of Chapter 2. Thus, an SEA must assure that it will not influence an LEA's decisionmaking process in selecting those Chapter 2 activities for which to use its Chapter 2 funds. This assurance, however, does not prevent the SEA from ensuring that the activities selected by an LEA are allowable under Chapter 2 or that the LEA is complying with other Chapter 2 requirements. It does, however, prohibit the SEA from substituting its judgment for that of an LEA as to the LEA's needs or from applying pressure on the LEA to fund specific types of programs.

4. May a State issue rules relating to the administration and operation of Chapter 2?

Yes. Section 298.11(a)(2) of the regulations authorizes an SEA to issue rules, regulations or policies as long as they are issued pursuant to State law and do not conflict with the provisions of Chapter 2 or limit the discretion of LEAs under Section 1533(c).

5. To what extent may an SEA enforce State rules or regulations without impinging on the "complete discretion" afforded LEAs under Section 1533(c)?

Under Section 1533(c) of Chapter 2, each LEA has, subject to the limitations and requirements of Chapter 2, "complete discretion in determining how [Chapter 2] funds shall be divided among the areas of targeted assistance...." Thus, the SEA may not influence what activities an LEA chooses to fund. Section 1533(c), however, does not prevent the SEA from enforcing State rules or regulations that are not in conflict with that section. For example, if a State has a regulation prohibiting teacher training during the school day, the SEA could not, under Section 1533(c), prohibit an LEA from providing teacher training activities with Chapter 2 funds, but could limit when that training occurs.

6. Does the requirement in Section 1533(c) of Chapter 2 that an LEA ensure that the expenditure of Chapter 2 funds be for the purpose of meeting the educational needs within the LEA's schools limit in any way the LEA's use of the funds?

This requirement ensures that an LEA uses its Chapter 2 funds to meet the needs of children in the LEA, so that the State does not control how the LEA uses those funds. It was added to the predecessor provision in Chapter 2 of the ECIA to guard against a practice that allegedly occurred under Titles III and IV-C of the Elementary and Secondary Education Act of 1965, whereby LEAs were used as "conduits" to fund projects of interest to the State, using Federal dollars that were intended by Congress to go to the LEAs. See H.R. Rep. No. 51, 98th Cong., 1st Sess. 6 (1983); 129 Cong. Rec. H1890-91 (daily ed. Apr. 12, 1983); 129 Cong. Rec. H10604-05 (daily ed. Nov. 18, 1983). Thus, Section 1533(c) requires that an LEA expend Chapter 2 funds only to meet the educational needs of children in its own district. The phrase "educational needs," however, does not in any way limit the activities authorized under Chapter 2 for which an LEA may use its funds.

7. What information, if any, should an SEA obtain in an LEA's Chapter 2 application to show that the funds are being used only for the purposes of meeting the educational needs of children within the schools of the LEA?

The Department does not believe that either Section 1533(c) of Chapter 2 or Section 298.11(b)(2)(ii) of the regulations adds a needs-assessment requirement not otherwise required by Chapter 2. As a result, it does not appear that the existence of this provision in the statute or the regulations should stimulate extensive State rulemaking. Section 1533(a)(3) of Chapter 2 already requires an LEA to assure in its application that it will comply with the provisions of Chapter 2.

8. What information is the SEA required to disseminate to the public?

Section 1522(a)(5) of Chapter 2 requires that the SEA provide for timely public notice and public dissemination of information on--

- o the allocation of funds reserved for the State's use (including the allocation of those funds among the targeted assistance areas, the allocation of funds for instructional or personnel training programs for private school children and teachers, the allocation of funds for the administration of Chapter 2, and the allocation for effective schools programs);

- o the formula for the allocation of funds to LEAs; and
- o the planning, development, support, implementation, and evaluation of State programs assisted under Chapter 2.

Section 1522(a)(6)(B) also requires that the State's evaluation of the effectiveness of programs assisted under Chapter 2, along with the comments of the State Advisory Committee, be made available to the public.

9. Should an SEA review LEA applications to ensure that the expenditures for Chapter 2 services for public and private school children are equal or, if not equal, that the justification for expending unequal amounts is adequate?

Yes. Section 1522(a)(1) of Chapter 2 and Section 298.11(a)(1) of the regulations assign to the SEA responsibility for the administration and supervision of the programs assisted under Chapter 2, including the services an LEA provides to children in private schools. One of the major responsibilities in administering and supervising services to private school children is to ensure that the equal expenditure requirement is met.

10. May an SEA withhold or suspend Chapter 2 payments to its LEAs?

Yes. Sections 434(b)(2) and (3) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232c(b)(2) and (3), apply to Chapter 2. These sections authorize an SEA to suspend or withhold payments to LEAs that have failed substantially to comply with Chapter 2 requirements.

STATE APPLICATIONS

Statutory Requirement

Section 1522 of Chapter 2, 20 U.S.C. 2932.

Regulatory Requirement

Section 298.5 of the regulations.

Questions and Answers

1. Does the Department require a standard State application for Chapter 2?

No. A State may submit its Chapter 2 application in any form that the State determines is appropriate. See Section 298.5(a)(2).

2. May a State's Chapter 2 application cover more than one year?

Yes. A State may file a Chapter 2 application that covers one, two, or three years. See Section 1522(b) of Chapter 2.

3. What is the function of the Secretary with respect to State applications?

The Secretary checks to ensure that each State's Chapter 2 application meets the statutory requirements in Section 1522 of Chapter 2. If the application meets those requirements, the Secretary retains the application and awards the State its Chapter 2 grant. If the application does not meet those requirements, the Secretary indicates to the State the requirement that the application failed to meet. The State may revise its application and submit those revisions to the Secretary.

4. In its Chapter 2 application, must a State indicate the amount of funds it intends to allocate to various Chapter 2 activities?

Yes. A State's Chapter 2 application must include--

- o the planned allocation of funds reserved for the State's use under Section 1512(a) among the targeted assistance programs, along with a description of the

programs and projects and the reasons for selecting these programs and projects.

- o the allocation of such funds required to implement Section 1572 (i.e., any funds the SEA intends to use for instructional or personnel training programs for private school children and teachers);
 - o the administrative costs of carrying out the SEA's responsibilities under Chapter 2 in accordance with Section 1521(b)(1); and
 - o the allocation of funds reserved for effective schools programs in accordance with Section 1521(b)(2).
5. In its Chapter 2 application, must a State indicate how it will adjust its formula to provide higher per pupil allocations to LEAs which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child?

Yes. Section 1522(a)(9) requires that a State's application indicate how the State will adjust its formula to comply with the criteria outlined in Section 1512(b)(2); how children under Section 1512(b)(2) are defined; the basis on which a determination of the LEAs under Section 1512(b)(2)(A) is made; and the percentage of the State grant that the State proposes to allot on an adjusted basis.

6. Under what circumstances must a State amend its Chapter 2 application?

Section 298.5(b)(2) of the regulations requires that a State amend its application if the State makes any substantial changes in its application.

7. What procedures are to be followed to amend a State application?

Amendments to State applications must comply with the requirements in Section 1522 of Chapter 2. If the amendments deal with the items listed in Section 1522(a)(2), the State Advisory Committee must be given an opportunity to advise the SEA on the changes. The amendments must be filed with the Secretary who checks to ensure that they meet the requirements in Section 1522.

8. Must a State amend its application if the State changes the allocation of funds for authorized programs?

Section 298.5(b)(2) of the regulations requires that a State amend its application if the State makes substantial

changes. Minor adjustments in dollar amounts among programs would not be considered substantial changes. The addition or deletion of a program or major adjustments in dollar amounts among programs, however, would require an amendment.

STATE ADVISORY COMMITTEE

Statutory Requirement

Section 1522(a)(2) of Chapter 2, 20 U.S.C. 2932(a)(2).

Regulatory Requirement

Section 298.4 of the regulations.

Questions and Answers

1. What is the role of the State Advisory Committee?

The State Advisory Committee's role is to advise the SEA on the allocation among targeted programs of funds reserved for State use, on the formula for the allocation of funds to LEAs and on the planning, development, support, implementation, and evaluation of State programs assisted under Chapter 2.

2. Does the State Advisory Committee deal with Chapter 2 only?

As Section 1522(a)(2) of Chapter 2 and Section 298.4(c) of the regulations provide, the only statutory responsibilities of the State Advisory Committee relate to Chapter 2.

3. Does the State Advisory Committee advise on the use of Chapter 2 funds distributed to LEAs under Section 1512?

No. The State Advisory Committee advises only on the use of the Chapter 2 funds reserved for the State's use under Section 1512 of Chapter 2, and on the formula for distributing the LEAs' funds. It does not advise on the use by LEAs of their Chapter 2 allocations.

4. May the State Advisory Committee mandate educational priorities for the State's use of its Chapter 2 funds?

No. According to Section 1522(a)(2) of Chapter 2, the State Advisory Committee's function is purely advisory.

Therefore, although it must advise the SEA on the allocation of Chapter 2 reserved for the State's use under Section 1512(a) of Chapter 2, the State Advisory Committee may not mandate educational priorities.

5. Is the State Advisory Committee required to advise the SEA on how the funds reserved for the State's use are to be expended?

Yes. The State Advisory Committee should, to discharge its responsibility under Section 1522(a)(2) of Chapter 2, make specific recommendations to the SEA on how the funds reserved for the State's use are to be expended. The State Advisory Committee may, of course, approve allocations recommended by the SEA. As stated in question #4, however, the State Advisory Committee cannot mandate that its recommendations be accepted.

6. How many members must there be on the State Advisory Committee?

The Chapter 2 statute contains no maximum or minimum number of members. It does require that the State Advisory Committee meet the representation requirements of Section 1522(a)(2) of Chapter 2. One person, however, may represent more than one of the listed groups.

7. Must "persons representative of" the groups listed in Section 1522(a)(2) of Chapter 2 actually be members of those groups (e.g., students)?

Not necessarily. Section 1522(a)(2) of Chapter 2 requires that the State Advisory Committee be broadly representative of the educational interests and the general public in the State, including persons representative of the groups listed in (A)-(I). Thus, although all the interests must be represented, it is not essential that members of those groups be named for every category as long as those named can be reasonably deemed to represent their category.

8. May the expenses of the State Advisory Committee be charged against the Chapter 2 funds reserved for the State's use?

Yes. Section 1521(a)(1)(D) of Chapter 2 specifically authorizes an SEA to use Chapter 2 funds for reasonable expenses incurred by the State Advisory Committee in carrying out its functions under Section 1522(a)(2). These costs are administrative costs, however, and must be included in the State's total administrative costs for Chapter 2, which may not exceed 25 percent of the funds reserved for State use.

9. What expenses incurred by the State Advisory Committee are allowable costs?

There must be a direct relationship between the costs incurred for a Chapter 2 project and the authorized purposes of that project. Thus, the expenses incurred by the State Advisory Committee should be consistent with the authorized functions of the committee under Section 1522(a)(2) of Chapter 2 to advise the SEA through a process of "active and continuing consultation." Within this framework, an SEA has considerable flexibility in determining what expenses of the State Advisory Committee are allowable.

10. May a State receive a Chapter 2 grant if it does not establish a State Advisory Committee?

No. Section 1522(a)(2) of Chapter 2 and Section 298.4(a) of the regulations require any State that desires to receive a grant under Chapter 2 to establish a State Advisory Committee.

ALLOCATION OF CHAPTER 2 FUNDS TO STATES

Statutory Requirement

Section 1511 of Chapter 2, 20 U.S.C. 2921.

Questions and Answers

1. **Is the Secretary's basis for allotting Chapter 2 funds to States the same as an SEA's basis for distributing Chapter 2 funds to LEAs?**

No. Under Section 1511 of Chapter 2, the Secretary allots Chapter 2 funds to States based on the ratio of the school-age population (children aged 5 through 17) in the State to the school-aged population of all the States. Once a State receives its Chapter 2 funds, Section 1512(a) of Chapter 2 requires the SEA to distribute not less than 80 percent of those funds to its LEAs according to the relative enrollments in public and participating private, non-profit schools within those LEAs, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to those LEAs with the greatest numbers or percentages of "high-cost" children.

2. **What requirements must a State meet in order to receive a Chapter 2 grant?**

To receive a Chapter 2 grant, a State must have on file with the Secretary an application that satisfies the requirements in Section 1522 of Chapter 2. In addition, the SEA must have its formula for the allocation of Chapter 2 funds to LEAs approved by the Secretary.

3. **Is there any provision for the Department of the Interior's Bureau of Indian Affairs (BIA) to receive financial assistance for Indian children under Chapter 2?**

No. Chapter 2 does not contain a set-aside under which the BIA would receive Chapter 2 funds to serve Indian children.

LOCAL APPLICATIONS

Statutory Requirement

Section 1533 of Chapter 2, 20 U.S.C. 2943.

Regulatory Requirement

Section 298.6 of the regulations.

Questions and Answers

1. What is the function of the SEA with respect to local applications?

The SEA must certify that an LEA's application meets the statutory requirements in Section 1533(a) of Chapter 2 before it distributes to the LEA its allocation of Chapter 2 funds.

2. In its application, must an LEA indicate the amount of funds it intends to allocate to various Chapter 2 activities?

Section 1533(a)(1) of Chapter 2 requires an LEA that desires to receive a grant under Chapter 2 to file an application which "sets forth the planned allocation of funds among targeted assistance programs described in section 1531 ... and describes the programs, projects, and activities designed to carry out such targeted assistance which it intends to support, together with the reasons for the selection of such programs, projects, and activities." The LEA application must also include "the allocation of such funds required to implement section 1572" concerning equitable services for private school children.

3. In its application must an LEA include its reasons for selecting the programs to be funded under Chapter 2?

Yes. See Section 1533(a)(1)(A).

4. Must an LEA application address how the programs to be funded under Chapter 2 will improve the quality of education for students?

Yes. Section 1533(a)(2) requires an LEA to address, in its application, how assistance under Chapter 2 will "contribute to the goals of the program of improving student achievement or improving the quality of education for students."

In reauthorizing Chapter 2, Congress responded to criticism that Chapter 2 was unfocused, provided insufficient accountability, and sometimes resulted in funds being used for general education purposes. Accordingly, Congress sought to make Chapter 2 "a better vehicle for school improvement by recasting the uses of funds in general terms, but with an identifiable theme of improving quality and promoting innovation." H.R. Rep. No. 95, 100th Cong., 1st Sess. 50 (1987). The requirement that an LEA provide a description of how its program will improve student achievement or the quality of education is in keeping with this theme.

5. Is there an application deadline for LEAs?

No. Chapter 2 does not include a specific deadline by which LEAs must apply for funds. However, the SEA, in carrying out its administrative and supervisory responsibilities under Section 1501(c), may establish a deadline for the receipt of applications. (See also question #4 under General Responsibilities of State and Local Educational Agencies.)

6. Under what circumstances must an LEA amend its Chapter 2 application?

An LEA must amend its application if the LEA makes any substantial changes in its application.

SYSTEMATIC CONSULTATION WITH PARENTS

Statutory Requirement

Section 1533(a)(5) of Chapter 2, 20 U.S.C. 2943(a)(5).

Regulatory Requirement

Section 298.6(c) of the regulations.

Questions and Answers

1. Must an LEA consult with parents, teachers, administrative personnel, and other appropriate groups in the allocation of funds for Chapter 2 programs and in the design, planning, and implementation of those program?

Yes. See Section 1533(a)(5) of Chapter 2; Section 298.6(c) of the regulations.

2. What other groups would be appropriate to include in the consultation process?

Section 298.6(c)(3) of the regulations lists examples of groups that may need to be consulted, such as librarians, school counselors, school social workers, school psychologists and other pupil services personnel. The list is not meant to be all inclusive, but rather to provide examples of the types of groups that may be consulted. The LEA may include other groups as a part of the consultation as it deems appropriate.

3. Must parents of children attending private schools be included in the consultation process?

Yes. See Section 298.6(c)(1) of the regulations.

4. What standards constitute "systematic consultation with parents" required by Section 1533(a)(5) of Chapter 2?

It is the responsibility of each LEA to define, based on local needs and circumstances, what standards constitute "systematic consultation with parents." However,

"systematic consultation" normally would be an ongoing process that is open to all interested persons and is calculated to provide advice within a time frame that can affect the ultimate decision.

5. Is the requirement for "systematic consultation" with parents, teachers, and administrative personnel satisfied by holding an official, public meeting of the local school board to discuss how Chapter 2 funds are to be spent?

Section 1533(a)(5) of Chapter 2 states that consultation involves the allocation of funds and the design, planning, and implementation of Chapter 2 programs. Although the form of consultation is a matter for local decision, Congress appears to have contemplated additional consultation beyond, or supplemental to, standard local practice exemplified by school board meetings. If an LEA does choose to make the local school board the vehicle for such consultation, Chapter 2 should be a standing item on the board's agenda for all public meetings. Also, the LEA should assure that private school parents and personnel are included as a part of the consultation process.

6. Must an LEA have written policies to ensure that parents have been consulted in the allocation of funds for Chapter 2 purposes and in the design, planning, and implementation of Chapter 2 programs?

Chapter 2 does not require the LEA to develop written policies relating to the consultation process. However, an LEA is free to establish such policies in order to ensure that the consultation requirement under Chapter 2 is met. In fact, given the importance of parent involvement, an LEA may be well advised to develop strong policies. Educational research has clearly established the importance of parents in educating children. As reported in What Works, the Department's compendium of research about teaching and learning, "[p]arents are their children's first and most influential teachers" and involvement by parents "helps children learn more effectively." Schools must capitalize on this relationship and afford parents the opportunity to become involved in critical choices regarding their children's education.

7. Must an LEA have written documentation to show that parents have been consulted in the allocation of funds for Chapter 2 purposes and in the design, planning, and implementation of Chapter 2 programs?

Yes. Such documentation could include copies of requests to parents for suggestions on the allocation and use of Chapter 2 funds and the parents' responses; copies of notices to

parents of meetings to discuss the allocation and use of Chapter 2 funds and the minutes of such meetings; records of parental involvement in Chapter 2 activities; and copies of information provided to parents on the results of Chapter 2 activities.

8. **How can an LEA fulfill its responsibility to ensure parental consultation in the allocation of funds for Chapter 2 purposes and in the design, planning, and implementation of its Chapter 2 programs?**

Activities an LEA may consider to ensure effective parental involvement in Chapter 2 include, but are not limited to--

- o Providing timely information concerning the Chapter 2 program.
- o Soliciting parents' suggestions in the allocation of funds and in the design, planning, and implementation of the program.
- o Providing timely responses to parents' recommendations.
- o Providing reasonable access to meeting space and materials.
- o Providing opportunities for parents to view the program's operation.
- o Issuing monthly newsletters.
- o Conducting parent workshops.
- o Allowing one or more parent representatives to participate on budget committees advising school administrators on the use of local, State, and Federal funds.
- o Hiring community aides to work with parents in the home and to serve as a link between school and home.
- o Training parents to work with their children at home.
- o Facilitating volunteer or paid participation by parents in school activities.
- o Designating LEA parent coordinators.
- o Establishing parent advisory councils.

An LEA may need to use more than one of these activities to ensure adequate and effective two-way communication.

9. What types of information could an LEA provide to parents in order to facilitate effective parent participation in Chapter 2 programs?

Meaningful parent involvement requires adequate information upon which to base that involvement. LEAs may wish to consider providing parents, or making available to parents -- in an ongoing, timely, and adequate manner -- proposed and final project applications, project plans, budgetary information, evaluation data, local, State, and Federal laws, regulations, and guidelines, and any other Chapter 2 information needed for full, effective parent participation. In addition, if appropriate, the LEA should inform individual parents of their children's participation in special Chapter 2 projects (e.g., gifted and talented, at-risk).

10. How can an SEA ensure that its LEAs are fulfilling their responsibilities to provide for systematic consultation with parents?

SEAs can provide guidance regarding the documentation to be maintained by LEAs to show how they have fulfilled the requirements of 1533(a)(5) of Chapter 2. SEAs can review this documentation when they visit LEAs. SEAs can also require LEAs to include in their applications a description of how they plan to involve parents.

11. May Chapter 2 funds be used to pay reasonable costs of providing for systematic consultation with parents?

Yes. For examples of kinds of parent involvement activities that could be supported with Chapter 2 funds, see the response to question #8.

12. In a residential State school that serves abused/neglected children whose parents may not have contact with them, how can the parent consultation requirement be met?

If an LEA cannot consult with parents because those parents do not have contact with their children, the school should examine other ways of addressing the parental consultation requirement. For example, the school could seek advice from organizations and agencies that represent the interests of parents. Such organizations might include social services agencies or child advocacy groups.

ALLOCATION OF CHAPTER 2 FUNDS TO LOCAL EDUCATIONAL AGENCIES

Statutory Requirement

Section 1512 of Chapter 2, 20 U.S.C. 2922.

Regulatory Requirement

Section 298.7 of the regulations.

Questions and Answers

1. May an SEA reserve less than 20 percent of its Chapter 2 allocation for the State's use and distribute more than 80 percent to its LEAs?

Yes. Section 1512(a) of Chapter 2 and Section 298.7(b)(1) of the regulations require that an SEA distribute at least 80 percent of the State's Chapter 2 funds to LEAs. Thus, nothing prohibits an SEA from distributing more than 80 percent to LEAs within the State.

2. Does an LEA receive Chapter 2 funds based on the number of children residing in the LEA or the number enrolled in schools within the LEA?

As indicated in 1512(b) of Chapter 2 and Section 298.7(b) of the regulations, an LEA receives Chapter 2 funds according to the relative number of children enrolled in public schools and in private, nonprofit schools that desire that their students participate in the Chapter 2 program.

3. Is enrollment to be counted by average daily attendance, average daily membership, or some other method?

Each State may decide what uniform criterion of enrollment it wishes to use.

4. What fiscal year must be used in calculating enrollment?

As stated in Section 1512(b) of Chapter 2 and Section 298.7(b)(2)(i) of the regulations, the SEA must calculate enrollment within each LEA based on the number of children enrolled for the fiscal year preceding the fiscal year in which the determination is made. For example in calculating enrollment for the distribution of funds during the 1990-91

the 1990-91 school year, the SEA would use enrollment data from the 1989-90 school year.

5. How do children in a State-operated school serving groups such as neglected or delinquent youth, mentally retarded persons, or mentally ill persons receive Chapter 2 services?

How children in a State-operated school receive Chapter 2 services depends on the school's status within the State. For example, if the State considers a State-operated school to be an LEA within the definition in Section 1471 of the ESEA, the school would apply for and receive Chapter 2 funds on the same basis as any other LEA in the State. Under this circumstance, the State-operated school would provide its own Chapter 2 services. If the State-operated school is not an LEA but has an arrangement with an LEA under which the school receives educational services, the children in the State-operated school would be counted as part of the LEA's enrollment and the LEA would provide Chapter 2 services to them. In addition, an SEA may choose to spend a portion of the Chapter 2 funds reserved for the State's use to provide services to children in State-operated schools.

6. Some States have regional services centers or intermediate units that provide educational services to a number of LEAs. In many instances, these regional centers meet the statutory definition of an LEA. Also, as a result of these arrangements, a child may be enrolled in both a component LEA and a regional center. How should States deal with regional service centers, which meet the statutory definition of an LEA, in the Chapter 2 distribution formula?

Section 1512 of Chapter 2 does not permit any double counting of children. Thus, when both a regional center and the component LEAs that it serves qualify as LEAs under the statutory definition of an LEA, Chapter 2 requires the SEA to distribute funds to either the regional center or the component LEAs, or to determine an equitable means of dividing the funds among the eligible LEAs. For example, if a regional service center is providing services to children in the component LEAs within the center's service area, the SEA may choose to distribute Chapter 2 funds to the component LEAs which could then contract with the regional center for those services. Other options are also available. If an SEA decides to distribute Chapter 2 funds directly to a regional center on the basis that the center is an LEA, then the regional center must apply for those funds under Section 1533 of Chapter 2 and meet all the requirements imposed on LEAs by the statute and the regulations.

7. What kinds of children are those whose education imposes a higher than average cost per child ("high-cost" children)?

Section 1512(b)(2)(A) of Chapter 2 and Section 298.7(b)(2)(ii) of the regulations require an SEA to adjust its formula to provide higher per pupil allocations only to LEAs that serve the greatest numbers or percentages of children living in areas with high concentrations of low-income families; children from low-income families; and children living in sparsely populated areas.

8. In calculating its formula for the distribution of Chapter 2 funds, may a State use factors other than the three listed in the statute?

No. The categories of "high-cost" children are limited to the three listed in Section 1512(b)(2)(A) of Chapter 2 and Section 298.7(b)(2)(ii) of the regulations. However, States have considerable flexibility in adjusting their formulas. For example, the State may decide what percentage of Chapter 2 funds is to be allocated on an adjusted basis. A State may also decide, within the statutory categories, how to define "high-cost" children and which categories to use.

9. Must an SEA adjust its formula to provide higher per pupil allocations to LEAs with the greatest numbers or percentages of "high-cost" children even if the State has already taken those children into consideration through its State equalization formula?

Yes. See Section 298.7(b)(2)(ii) of the regulations. Because this adjustment is a Chapter 2 requirement, an SEA in a State with a State equalization formula that takes into consideration "high-cost" children must still adjust its Chapter 2 formula. SEAs, however, have considerable flexibility in how they make this adjustment.

10. Must the District of Columbia, Puerto Rico, and Hawaii adjust their Chapter 2 allocations under Section 1512 of Chapter 2?

No. Because the District of Columbia, Puerto Rico and Hawaii each have only one LEA, they do not have to adjust their Chapter 2 allocations under Section 1512 of Chapter 2 to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of "high-cost" children.

11. If an LEA has no "high-cost" children, may an SEA exclude that LEA from receiving any Chapter 2 funds?

No. Section 1512(b) of Chapter 2 requires an SEA to provide an allocation based on enrollment to an LEA otherwise eligible even though that LEA has no "high-cost" children.

12. May all LEAs having "high-cost" children receive higher per pupil allocations based on the adjustment required under Section 1512 of Chapter 2 or is this adjustment confined to only those LEAs with the greatest numbers or percentages of such children?

Section 1512(b)(2)(A) of Chapter 2 and Section 298.7(b)(2)(ii) of the regulations require an SEA to adjust its formula to provide higher per pupil allocations only to LEAs which have the greatest numbers or percentages of three categories of "high-cost" children. Thus, the SEA must establish criteria to determine which LEAs have the greatest numbers or percentages of "high-cost" children. The SEA, however, has considerable flexibility in setting such criteria.

13. What standards does the Secretary use in approving an SEA's criteria for adjusting its allocation formula to provide for "high-cost" children?

The Secretary approves the criteria submitted by an SEA for adjusting its allocation formula if the criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within LEAs in the State based on the high-cost factors.

14. If an SEA wishes to modify its criteria for the distribution of Chapter 2 funds to LEAs after those criteria have been approved by the Secretary, must it request approval again from the Secretary?

Yes. Because Section 1512 of Chapter 2 requires the Secretary to approve an SEA's criteria for the distribution of Chapter 2 funds, the Secretary must approve modifications of those criteria. In addition, the State Advisory Committee must have the opportunity to comment on the modifications, and there must be public notice and dissemination of information about the modifications before they are submitted to the Secretary.

15. If an LEA does not apply for Chapter 2 funds, may its funds be distributed to other LEAs?

After the SEA makes the necessary arrangements for the provision of Chapter 2 services to children enrolled in private, nonprofit schools within the LEA, the SEA may, in accordance with Section 298.8 of the regulations, distribute the balance to other LEAs in the State.

REALLOCATION OF CHAPTER 2 FUNDS

Regulatory Requirement

Section 298.8 of the regulations.

Questions and Answers

1. May an SEA reallocate Chapter 2 funds?

Yes. See Section 298.8(a) of the regulations.

2. During what period of time may an SEA reallocate Chapter 2 funds?

As indicated in Section 298.8(b) of the regulations, an SEA may reallocate Chapter 2 funds only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year.

3. Doesn't the reallocation authority in Section 298.8 of the regulations have the practical effect of curtailing the period of availability of funds at the LEA level?

As provided in Section 412(b) of GEPA and Section 298.8 of the regulations, an LEA may obligate Chapter 2 funds during the fiscal year for which the funds were appropriated or during the succeeding fiscal year. To avoid an SEA reallocating funds that an LEA would have obligated during such succeeding fiscal year, Section 298.8(a)(1)(ii)(B) provides that the SEA may reallocate only those Chapter 2 funds that exceed the amount that the LEA needs to provide a prudent and justifiable reserve of funds for operating its Chapter 2 projects effectively during the succeeding fiscal year.

4. Must funds available for reallocation be distributed to all LEAs or may they be targeted on LEAs with particular needs?

Provided there are objective criteria for the selection of LEAs, Chapter 2 funds available for reallocation may be targeted on particular LEAs.

5. For what period of time are reallocated funds available for obligation?

The reallocation of funds does not extend the period of availability. Reallocated funds must be obligated during the period of availability established when the funds were initially allocated.

USE OF CHAPTER 2 FUNDS

Statutory Requirements

Section 1512(c)(2) of Chapter 2, 20 U.S.C. 2922(c)(2).

Section 1521 of Chapter 2, 20 U.S.C. 2931.

Sections 1531-1532 of Chapter 2, 20 U.S.C. 2941-2942.

Sections 1541-1542 of Chapter 2, 20 U.S.C. 2951-2952.

Regulatory Requirements

Sections 298.12-298.14 of the regulations.

Questions and Answers

1. Are there limitations on the length of time Chapter 2 funds may be used to support a program?

There are no specific limitations on the length of time Chapter 2 funds may be used to support a program. Section 1501(b) of Chapter 2 states that one of the purposes of Chapter 2 is to provide the initial funding to implement promising educational programs that can be supported by State and local sources of funding after those programs are demonstrated to be effective. However, that section also includes other purposes: to provide a continuing source of innovative, educational improvement, and support for library and instructional materials; to meet the special educational needs of at-risk and high-cost students; to enhance the quality of teaching and learning through initiating and expanding effective schools programs; and to allow SEAs and LEAs to meet their educational needs and priorities for targeted assistance. No one part of this section take precedence over any other part. Rather, it offers options to an LEA. The LEA must, however, use Chapter 2 funds for a targeted assistance program as described in Section 1531(b) of Chapter 2.

2. May an SEA or a State legislature establish -- through the budget approval process, legislation, or other means -- binding requirements on an LEA with respect to the division of funds among the targeted assistance areas of Chapter 2 as set forth in Section 1531?

No. Under Sections 1522(a)(8) and 1533(c) of Chapter 2 and Section 298.11(a)(1)(ii) of the regulations, a State may not exercise any influence in the decision-making processes of LEAs as to the expenditures for programs among the targeted assistance areas.

3. May equipment be purchased under Chapter 2?

Unlike Chapter 2 of the ECIA, Section 1531(b)(2) does not authorize the use of Chapter 2 funds to purchase general instructional equipment as a program in and of itself. Thus, with the exception of computer hardware to be used for instructional purposes, SEAs and LEAs may purchase equipment with Chapter 2 funds only if such equipment is used as a part of a Chapter 2 instructional program to meet one of the areas of targeted assistance in Section 1531(b). See Section 298.12(b) of the regulations.

4. Does Chapter 2 require that equipment be insured?

No.

5. May Chapter 2 funds be used to hire personnel?

Yes, provided those personnel are hired to carry out activities authorized under Chapter 2 and State practices permit such use of Chapter 2 funds.

8. If there are multiple funding sources for one position, must an LEA or SEA keep time and effort records?

Chapter 2 funds may only be spent on authorized Chapter 2 activities. Therefore, where a Chapter 2 paid employee is working on Chapter 2 and non-Chapter 2 activities, records must reflect the distribution of time among activities. Also, in order to assure compliance with Section 1521(b) of Chapter 2, an SEA must maintain time and effort records for SEA employees whose time is divided among two or more of the following: State administration, effective schools, and technical assistance activities.

9. May an LEA or SEA contract with a "for profit" company or organization for services and/or materials under any circumstances?

Yes, within certain limitations. Under Section 1532(b) of Chapter 2 and Section 298.12(c) of the regulations, an SEA or LEA may use Chapter 2 funds to make grants to and to enter into contracts with LEAs, institutions of higher education, libraries, museums, and other public and private nonprofit agencies, organizations, and institutions. The conference report accompanying Chapter 2 indicated that the

conference committee agreed to include this authority but specifically amended it to "limit[] private agencies to only those which are nonprofit." H.R. Rep. No. 567, 100th Cong., 2d Sess. 349 (1988). The Secretary interprets this provision to apply only to grants or contracts to operate targeted assistance programs. Thus, it does not limit an SEA's or LEA's authority to contract with an individual or a for-profit corporation to purchase specific goods or services to assist the SEA or LEA in carrying out a targeted assistance program, provided that the SEA or LEA maintains overall administrative and supervisory control of the project, activity, or program. Examples of circumstances for which it may be possible to contract with a for-profit entity are: purchasing of equipment and materials; contracting for computer hardware and software; contracting for audit services; contracting for evaluation services; maintenance agreements on equipment; and contracting with an individual or organization to provide training.

10. May insurance costs be paid from Chapter 2 funds?

Yes. Insurance costs are allowable under OMB Circular A-87, incorporated by reference in 34 CFR 80.22(b). Thus, if a State has adopted Part 80, insurance costs would be allowable under Chapter 2. If a State is following State procedures, those procedures would govern whether insurance costs are allowable.

11. May Chapter 2 funds be used to pay the costs of unemployment compensation?

Regardless of the source of funds for an employee's salary, benefit levels and entitlement to unemployment compensation are determined by the State in which the person is employed. Although Chapter 2 funds may be used for the salaries of persons employed by Chapter 2 projects, the employer of the Chapter 2 project staff is the SEA or LEA in which the staff work, and not the Federal Government. Therefore, any determination as to whether a Chapter 2 employee is entitled to receive unemployment compensation is a matter of State law.

If State law permits, there are at least three acceptable ways in which an SEA or LEA may use a portion of its Chapter 2 funds to help defray unemployment compensation costs. If an SEA or LEA currently participates in an unemployment compensation insurance program in which the insurance rate charged is principally a function of the SEA's or LEA's past unemployment compensation experience and the rate is applied uniformly and consistently to all salaries paid by the SEA or LEA, the SEA or LEA may use Chapter 2 funds to pay premiums based on the insurance rate and the amount of the

salaries it is paying with those funds. Under this approach, however, Chapter 2 funds may be used to pay the premiums only if the rate is applied uniformly and consistently to all salaries being paid by the SEA or LEA.

Similarly, if an SEA or LEA has established a reserve from which it makes payments of unemployment compensation claims, it may use Chapter 2 funds to make payments to that reserve. Payments of Chapter 2 funds for that purpose are allowable to the extent that the type of coverage, extent of coverage, and the rate of payment would have been allowed had insurance been purchased to cover the risks.

If an SEA or LEA does not currently participate in an unemployment compensation insurance program or contribute to a reserve, it may establish a fringe benefit rate as the basis for the use of Chapter 2 funds to pay a portion of the amount of its unemployment compensation claims. That rate is the percentage that the unemployment compensation claims represent of the total amount of salaries being paid by the SEA or LEA. The SEA or LEA multiplies the total amount of the salaries of its Chapter 2 funded personnel by this rate to compute the amount of Chapter 2 funds that it may use to pay its unemployment compensation claims. For example, if the unemployment compensation claims are \$20,000 and the total amount the SEA or LEA pays for salaries is \$2,000,000 (including \$150,000 for personnel paid from the Chapter 2 grant), then the "fringe benefit rate" used to compute payments for unemployment compensation claims is one percent of the SEA's or LEA's salaries. Multiplying the total amount of the salaries of personnel paid from Chapter 2 funds by this "fringe benefit rate," the SEA or LEA could use a total of \$1,500 in Chapter 2 funds to pay unemployment compensation claims (one percent of \$150,000).

12. May SEAs and LEAs charge an indirect cost rate for Chapter 2?

Yes. However, because Chapter 2 contains a supplement-not-supplant requirement, SEAs and LEAs must use a restricted indirect cost rate. See Section 298.2(a)(1)(i)(D)(5) which makes Section 76.563 of EDGAR concerning restricted indirect cost rates applicable to Chapter 2.

13. May Chapter 2 funds be used as matching funds under another Federal program?

No. Several decisions of the Comptroller General of the United States have held that, unless specifically authorized by Federal statute, a cost-sharing or matching requirement in one Federal grant program may not be met with funds from another Federal grant program. See 34 CFR 80.24(b)(1) of EDGAR.

14. May Chapter 2 funds be used for State strengthening activities?

No. Unlike Title V of the Elementary and Secondary Act of 1965 and Chapter 2 of the ECIA, State strengthening activities are not allowable. Under Section 1521 of Chapter 2 of the ESEA and Section 298.13 of the regulations, Chapter 2 funds reserved for State use may only be used under three categories: State administration of Chapter 2 programs; assistance to LEAs with respect to targeted assistance under Section 1531; and assistance to LEAs and statewide activities to carry out effective schools programs under Sections 1541-1542.

15. Are there any limitations on the use of funds reserved for State use?

Yes. Under Section 1521 of Chapter 2 and Section 298.13 of the regulations there are two limitations on State's use of funds. First, an SEA may use no more than 25 percent of the funds reserved for the State's use in any fiscal year for its administration of Chapter 2 programs. Second, an SEA must use at least 20 percent of the Chapter 2 funds reserved for the State's use in any fiscal year for technical assistance to LEAs for statewide activities to carry out effective schools programs, unless a waiver is granted.

16. If an SEA reserves less than 20 percent of its State's allocation for its own use, is the 25 percent limitation on administrative costs based on the actual amount the SEA reserved or the full 20 percent of the State's allocation?

Under Section 1521(b)(1) of Chapter 2 and Section 298.13(b)(1), an SEA may not use more than 25 percent of the Chapter 2 funds reserved for State use in any fiscal year for State administration. Thus, if an SEA elects to reserve less than 20 percent of the State allocation for its own use, it may use no more than 25 percent of this amount for State administration.

17. What types of State administrative activities are allowable under Chapter 2?

State administrative activities that are allowable under Chapter 2 include (1) supervising the allocation of funds to LEAs, (2) planning, supervising, and processing Chapter 2 funds reserved for State use, (3) monitoring and evaluating the Chapter 2 programs and activities, and (4) operating the State Advisory Committee.

18. If an SEA provides assistance to its LEAs relating to the evaluation of their Chapter 2 programs, are the costs associated with this activity charged to administration or technical assistance?

All evaluation costs, including assistance to LEAs in the evaluation of their Chapter 2 programs, would be charged to State administration. See Section 1521(a)(1)(C) of Chapter 2 and Section 298.13(a)(1)(iii) of the regulations.

20. Under what circumstances may a State qualify for a waiver of the effective schools requirement?

An SEA may request the Secretary to waive the effective schools requirement in Section 1521(b)(2)(A) if the State is spending on effective schools programs from non-Federal funds an amount equal to twice the amount required by Section 1521(b)(2)(A) of Chapter 2.

21. May an SEA request a waiver of the effective schools requirement during the second or third year of its three-year application?

Yes. If the SEA has information that it believes would qualify it for a waiver of the effective schools requirement under Section 1521(b)(2)(A), this information may be submitted to the Secretary for consideration during any year of an application.

22. In requesting a waiver of the effective schools requirement, what information should the SEA provide to the Secretary?

In requesting a waiver of the effective schools requirement, the SEA must submit a written request that includes the amounts the State is spending from non-Federal funds for effective schools programs and a description of those effective schools programs.

23. Are States required to comply with the requirements in Section 1572 (participation of children in private schools) when they use the Chapter 2 funds reserved for the State's use?

Yes, if the Chapter 2 funds reserved for the State's use are used to support instructional or personnel training programs. See Section 1572(a)(1) of Chapter 2; Section 298.31(b)(2).

24. May an SEA make grants to LEAs on a competitive basis under Chapter 2?

Yes. From the funds reserved for the State's use, an SEA may award grants or contracts on a competitive basis to LEAs, institutions of higher education, and public and private nonprofit agencies, organizations and institutions to carry out activities authorized under Chapter 2.

25. May States establish incentive programs with their Chapter 2 funds to encourage LEAs to spend their Chapter 2 funds for particular activities?

As long as the incentive program is for a purpose authorized under Chapter 2 and LEAs are not required to participate, such use of the State's Chapter 2 funds does not violate the statute.

Use of funds by LEAs

26. Must an LEA expend Chapter 2 funds for programs authorized in each targeted assistance area of Chapter 2 or may it concentrate its efforts on programs authorized under just one of the six targeted assistance areas?

LEAs may use Chapter 2 funds for programs authorized in any or all of the six targeted assistance areas.

27. Must an LEA spend the additional funds generated by "high-cost" children on services to benefit those children?

No. An LEA is not required to use the additional Chapter 2 funds received under its adjusted allocation to provide services to the children who generated those funds. Under Section 298.14(b) of the regulations, there are two options available to the LEA. First, an LEA may use the additional funds generated by "high-cost" children to provide services to children in public and private, nonprofit schools without regard to whether those children generated the additional funds. Under this option, an LEA may not take into account the extent to which children in private, nonprofit schools generated a portion of the LEA's adjusted allocation.

Rather, the LEA must generally expend equal per pupil amounts for services for public and private school children.

Under the second option, the LEA may use the additional funds it receives to provide services only to children enrolled in schools--both public and private nonprofit--in which children counted in the adjusted allocation are enrolled. If an LEA chooses this option, the LEA must use all funds received under its adjusted allocation in this manner and must use in each school the amount generated by children counted in the adjusted allocation who are enrolled in that school.

28. May an LEA use Chapter 2 funds for the costs of evaluating its Chapter 2 programs?

Yes, as long as those costs are reasonable.

29. To what extent may an LEA use Chapter 2 funds to pay direct administrative costs?

An LEA may use Chapter 2 funds to pay reasonable direct administrative costs associated with the operation of its Chapter 2 program. These costs may include the costs of "systematic consultation" with parents, teachers, and administrative personnel, and the costs associated with the provision of services for private school children.

30. May an LEA design its Chapter 2 projects to use only a portion of its allocation in order to carry over a large amount of funds to the succeeding fiscal year?

No. Section 1533(a)(1)(A) concerning LEA applications requires an LEA to "set[] forth the planned allocation of funds among targeted assistance programs described in section 1531 of [Chapter 2] and describe[] the programs, projects, and activities designed to carry out such targeted assistance which it intends to support...." This section contemplates that an LEA will plan to conduct projects in a given fiscal year based on the allocation the LEA has received. While it is true that Section 412(b) of GEPA (made applicable to Chapter 2 by Section 1575(a) of the ESEA) authorizes an LEA to carry over unobligated Chapter 2 funds to the fiscal year succeeding the fiscal year for which they are appropriated, this authority is not unbridled. It does not authorize an LEA to carry over a large amount of funds that would preclude the LEA from operating its current Chapter 2 projects successfully. Moreover, it does not contemplate that an LEA would design its current projects to use only a portion of its allocation in order to carry over a large amount of funds. Accordingly, Section 298.8(a)(1)(ii) of the regulations

authorizes an SEA to reallocate to other LEAs Chapter 2 funds that exceed the amount an LEA needs to operate its Chapter 2 projects effectively during the current fiscal year and to provide a prudent and justifiable reserve of Chapter 2 funds for operating its Chapter 2 projects effectively during the next fiscal year.

Under Sections 1501(c) and 1522(a)(1) of Chapter 2, the SEA has the responsibility for supervising and administering Chapter 2 funds. As part of this responsibility, the SEA has the duty to examine whether its LEAs are expending Chapter 2 funds in accordance with the projects described in their applications and to ensure that its LEAs are conducting projects that utilize the Chapter 2 funds they are allotted. Moreover, the SEA has the responsibility to ensure that an LEA does not carry over more than a "prudent and justifiable reserve". If the SEA finds that an LEA is not using its Chapter 2 funds accordingly, the SEA should have procedures for reallocating those funds to other LEAs that have a need for the funds.

Use of Funds Under Targeted Assistance 1 - At-Risk Students

31. May Chapter 2 funds be used to support dropout prevention programs?

Yes. Section 1531(b)(1) of Chapter 2 authorizes the use of Chapter 2 funds for dropout prevention programs.

32. May funds be used to support other programs that serve at-risk students, such as Chapter 1?

Yes. Chapter 2 funds may be used to support other at-risk programs. For example, an LEA could use its Chapter 2 funds to pay all or a portion of a Chapter 1 teacher's salary or to buy supplies or materials for some or all of its Chapter 1 students. However, the LEA must be able to clearly identify and account for its Chapter 2 funds in order to comply with the requirements in Section 1533(a)(4) of Chapter 2.

Use of Funds Under Targeted Assistance 2 - Acquisition and Use of Instructional and Educational Materials

33. May an LEA use Chapter 2 funds to purchase computer hardware and software for the purpose of maintaining school attendance?

No. In accordance with Section 1531(b)(2) of Chapter 2 and Section 298.12(a)(2) of the regulations, Chapter 2 funds are limited to programs for the acquisition and use of computer

software and hardware only for instructional use. Maintaining school attendance is an administrative/management function of the LEA; therefore, the use of Chapter 2 funds to purchase computer hardware and software for this purpose would not be allowable under Chapter 2.

34. May Chapter 2 funds be used to purchase computer hardware and software to automate the library?

No. Under Section 1531(b)(2), the purchase of computer hardware and software must be for instructional use. Thus, the use of Chapter 2 funds to automate the library would not be allowed.

35. Under Chapter 2, may an LEA purchase library books and reference materials?

Yes. Chapter 2 authorizes programs for the acquisition and use of library books and reference materials. In its application, the LEA must address how such use of Chapter 2 funds will improve student achievement or improve the quality of education for students. See Section 1533(a)(2) of Chapter 2.

Use of Funds Under Targeted Assistance 3 - Schoolwide Improvement, Effective Schools

36. Is an LEA required to set aside a portion of its allocation for effective schools?

No. Unlike an SEA, an LEA is not required to reserve a portion of its allocation for an effective schools program.

37. If an LEA uses part of its Chapter 2 funds for an effective schools program, must the program meet all of the requirements under Section 1542 of Chapter 2?

Yes. In order to qualify as an effective schools program under Chapter 2, an LEA must plan a program which includes each of the objectives outlined in Section 1542. Also, as a part of its planning and application to the SEA, the LEA must identify the strategies under Section 1541 which will be employed in order to achieve these objectives. Of course, an LEA may use Chapter 2 funds to implement innovative programs to carry out schoolwide improvements under Section 1531(b)(3), which would not have to meet the requirements in Section 1542.

Use of Funds Under Targeted Assistance 4 - Training and Professional Development

38. May Chapter 2 funds be used to provide training for special education teachers?

Under Section 1532(b)(4) of Chapter 2 and Section 298.12(a)(4) of the regulations, Chapter 2 funds may be used for programs of training and professional development of educational personnel. However, if State law requires the use of State and/or local funds to meet the training needs of educational personnel, such as special education teachers, the LEA should ensure that Chapter 2 funds will be used to supplement rather than supplant these efforts.

39. May an LEA purchase equipment to be used for training educational personnel?

Under Section 298.12(b) of the regulations, Chapter 2 funds may be used to purchase instructional equipment that is used as a part of a targeted assistance program. Thus, if an LEA is using its Chapter 2 funds for a training and professional development program and instructional equipment is needed to carry out the program, Chapter 2 funds may be used to purchase the equipment.

Use of Funds Under Targeted Assistance 5 - Personal Excellence

40. May an LEA use Chapter 2 funds to pay for medical and dental exams for its students?

No. Chapter 2 funds may not be used to pay for the cost of delivering health services to students. However, under Section 1531(b)(5) of Chapter 2 and Section 298.12(a)(5) of the regulations, funds may be used for an instructional program which focuses on health education.

MAINTENANCE OF EFFORT

Statutory Requirements

Section 1571(a) of Chapter 2, 20 U.S.C. 2971(a).

Regulatory Requirement

Sections 298.21-298.22 of the regulations.

Questions and Answers

1. Must States maintain effort in order to receive funds under Chapter 2?

Yes, unless the Secretary grants a State a waiver of the maintenance of effort requirement for one year. See Section 1571(a)(1) and (a)(3) of Chapter 2; Section 298.21(a) of the regulations.

2. What year is the preceding fiscal year?

For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending June 30, 1987.

3. What expenditures are to be included in computing "aggregate expenditures"?

The expenditures to be considered in determining a State's compliance with the maintenance of effort requirement are State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant

operation and maintenance, fixed charges, and net expenditures to cover deficits for food service and student body activities.

Expenditures which are not to be considered in determining maintenance of effort are expenditures for community services, capital outlay, debt service or any expenditures of Federal funds.

4. May State and local funds for library/media centers be included in maintenance of effort determinations, even though those funds come from capital outlay funds?

Yes. When library/media centers are established, added to, or substantially upgraded, expenditures for library books and instructional materials may be included in maintenance of effort determinations, even though those expenditures may come from capital outlay funds.

5. May maintenance of effort be measured in terms of "constant" rather than "inflated" dollars?

No. The Chapter 2 statute does not appear to authorize the Secretary to measure maintenance of effort in "constant" dollars, rather than in "inflated" dollars.

6. How is maintenance of effort determined in a State in which State or local funds are appropriated on other than an annual basis?

If State or local funds are not appropriated in a State on an annual basis, the State may average its State and local expenditures over the number of fiscal years for which the appropriation is made. A State that chooses to average its expenditures in this way must continue to use this method for computing maintenance of effort for each year for which the State or local appropriation is made. A State that does not average its expenditures must attribute its expenditures to the fiscal year in which they were incurred.

7. To what extent does the Secretary reduce a State's Chapter 2 allocation if the State does not maintain effort at the 90 percent level?

Under Section 1571(a)(2) of Chapter 2, if a State fails to maintain effort, the Secretary reduces the State's allocation of funds in any fiscal year in the exact proportion to which the State fails to meet the requirement by falling below 90 percent of both the State's combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State) for the second preceding fiscal year. For examples of how such a reduction

would be made, see fiscal years 1986 and 1989 of the example in Question #8.

8. If a State incurs a maintenance of effort penalty, what base must be used to determine compliance with the maintenance of effort requirement in succeeding fiscal years?

In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

The following chart illustrates the maintenance of effort requirement. For example, in fiscal years 1986 and 1989, the State failed to maintain effort because its expenditures in the first preceding year (column 1) were less than 90 percent of its expenditures in the second preceding year (column 2). Accordingly, the State's Chapter 2 allocations were reduced in the exact proportion to which the State failed to meet the maintenance of effort requirement (column 4). In fiscal year 1987, the chart illustrates that the base used to determine compliance with the maintenance of effort requirement in the year following a failure to maintain effort is 90 percent of the third preceding year's expenditures rather than the second preceding year's expenditures. Use of the third preceding year's expenditures is required by Section 1571(a)(2) of Chapter 2, which provides that "no such lesser amount shall be used for computing the effort required ... for subsequent years." In fiscal years 1987 and 1988 the State maintained effort.

1	2	3	4
		Level of expenditures required to avoid maintenance of effort penalty (90 percent of column 2)	Penalty reduction in State's allocation
Current fiscal year	Expenditures in first preceding fiscal year	Expenditures in second preceding fiscal year	
1986	\$850,000 (FY 1984) (failure to maintain effort)	\$1,000,000 (FY 1983)	5.6% of State's allocation (\$50,000/ \$900,000)
1987	\$810,000 (FY 1985)	\$900,000 (90% of FY 1983 i.e., third preceding fiscal year-- instead of FY 1984)	None
1988	\$800,000 (FY 1986)	\$810,000 (FY 1985)	None
1989	\$700,000 (FY 1987) (failure to maintain effort)	\$800,000 (FY 1986)	2.8% of State's allocation (\$20,000/ \$720,000)

9. When there is failure to meet the maintenance of effort requirement and a State's Chapter 2 allocation is reduced, may the State reduce the allocation of the LEA or LEAs that caused the State to fail to maintain effort in order to reflect that failure?

Under Section 1571(a), a State is entitled to receive its full allocation of Chapter 2 funds if the State as a whole has maintained effort. As a result, the State may not reduce the allocation of an LEA that does not maintain effort as long as the State as a whole has maintained effort. However, if the failure of one or more LEAs to maintain effort causes the State to fail to maintain effort, the State may reduce those LEAs' allocation in the exact proportion to which they failed to meet the maintenance of effort requirement.

10. Under what circumstances may the Secretary grant a State a waiver of the maintenance of effort requirement?

According to Section 1571(a)(3) of Chapter 2, the Secretary may grant a waiver, for one year only, of the maintenance of effort requirement if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances. These circumstances include a natural disaster, a precipitous and unforeseen decline in the financial resources of the State or other exceptional or uncontrollable circumstances. However, the Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable.

11. What effect does a waiver of the maintenance of effort requirement have on a State's Chapter 2 allocation?

If the Secretary grants a waiver of the maintenance of effort requirement, the Secretary allocates the affected State its full allocation of Chapter 2 funds.

12. After the maintenance of effort requirement has been waived in a State, what base must be used to determine compliance with that requirement in succeeding fiscal years?

In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) (the year for which the State needed a waiver) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

13. Must private schools maintain effort?

No. The maintenance of effort requirement in Section 1571(a) of Chapter 2 is calculated on the basis of either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education. Expenditures for private education are not considered in the determination.

14. How does an SEA demonstrate that the maintenance of effort requirements have been met before it accepts its Chapter 2 grant?

The SEA must have on file in the Chapter 2 administrative unit of the SEA by July 1 of each year documentation to show that the statutory and regulatory requirements governing maintenance of effort have been met. This documentation must be readily available to State and Federal auditors and to Federal program personnel conducting program reviews.

SUPPLEMENT, NOT SUPPLANT

Statutory Requirement

Section 1571(b) of Chapter 2, 20 U.S.C. 2971(b).

Regulatory Requirement

Section 298.23 of the regulations.

Questions and Answers

1. What restriction does the supplement, not supplant requirement impose on SEAs' or LEAs' use of Chapter 2 funds?

By enacting the supplement, not supplant provision contained in Section 1571(b) of Chapter 2, Congress intended that Chapter 2 funds be used only to supplement the educational programs generally offered with State and local funds. To be in compliance with this requirement, therefore, an SEA or LEA may not divert State and local funds from an activity merely because Chapter 2 funds are available. In other words, the use of Chapter 2 funds may not result in a decrease in State and local funds for a particular activity which, in the absence of the Chapter 2 funds, would have been available to conduct the activity. A specific example of such a circumstance is any program that an SEA or LEA is required by law to provide. Because the SEA or LEA would have to use State and local funds to provide particular statutorily required services in the absence of Chapter 2 funds, the SEA or LEA may not use Chapter 2 funds in place of the State and local funds it would otherwise be required by law to use. Rather, the SEA or LEA may only use Chapter 2 funds to provide supplemental services that it would not have provided had the Chapter 2 funds not been available.

2. In States with school finance equalization formulas, may Chapter 2 funds be used in lieu of State dollars to make payments to LEAs?

No. Section 1571(b) of Chapter 2 and Section 298.23 of the regulations state that an SEA or LEA may use and allocate Chapter 2 funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Chapter 2 funds, be made available from non-Federal sources. In no case may such funds be used to

supplant funds from non-Federal sources. By taking an LEA's Chapter 2 funds into account in determining the amount of funds a State must supply to an LEA to equalize its financial resources, the State is using Chapter 2 funds to supplant State funds that it otherwise would have to allocate to the LEA.

3. Does it violate the supplement, not supplant requirement if an LEA uses Chapter 2 funds to continue a program previously operated with State funds, if the LEA no longer qualifies for the State funds?

An LEA may have qualified for State funds to operate a program for at-risk children, for example, based on the number of such children attending schools in the LEA. If the number of children goes down and the LEA therefore no longer qualifies for the State funds, the LEA may continue to operate the program with Chapter 2 funds without violating the supplement, not supplant requirement. There is no violation because the State funds would not be available, in the absence of Chapter 2, to continue the program previously provided. This answer, of course, presumes that the LEA would not fund the program out of any other non-Federal funds in the absence of Chapter 2.

4. May Chapter 2 funds be used to replace the share of State funds previously used to support certain State-level activities without violating the supplement, not supplant requirement?

Under the supplement, not supplant requirement, a State must look at what educational activities it would support with State funds if no Chapter 2 funds were available. If a State can demonstrate that it would not have State funds available to fund particular activities, or for some other reason, would not have used State funds for the particular activities, then it may be possible to use Chapter 2 funds to support those activities without violating the supplement, not supplant requirement. However, it is a violation of that requirement if a State decreases State funds for particular activities because Chapter 2 funds are available to support those activities.

5. If an LEA orders computer equipment that is to be paid for with both State funds and Chapter 2 funds, and subsequently the State funds are not provided, would the use of Chapter 2 funds to purchase the computer equipment be considered supplanting?

Section 1571(b) of Chapter 2 requires that Chapter 2 funds be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Chapter

2 funds, be made available from non-Federal sources. If the reduction of non-Federal funds for the purchase of the computer equipment would have occurred in the absence of Chapter 2 funding, the use of Chapter 2 funds for the same purpose would not be considered supplanting.

6. If State or local funds for a particular program are reduced although the maintenance of effort requirement is met, would the expenditure of Chapter 2 funds for that program constitute supplanting?

Compliance with the maintenance of effort requirement does not ensure that Chapter 2 funds have not supplanted State and local funds. Even if there is no reduction in State and local funds overall and the maintenance of effort requirement is met, there is a supplanting violation if Chapter 2 funds are used to supplant non-Federal funds which would have been expended for specific programs in the absence of Chapter 2 funding. Thus, the test to determine whether supplanting has occurred is not whether fiscal effort has been maintained but whether the programs supported with Chapter 2 funds would, in the absence of those funds, have been supported with State and local funds.

7. If an LEA uses Chapter 2 funds to purchase basic textbooks, does that expenditure violate the supplement, not supplant requirement?

Under Section 1571(b) of Chapter 2, Chapter 2 funds may not be used for activities that an LEA would, in the absence of the Chapter 2 funds, make available with non-Federal funds. Presumably, in the absence of Chapter 2 funds, an LEA would have to purchase basic textbooks in order to provide instruction in the various academic subjects. Thus, the use of Chapter 2 funds to purchase those textbooks that the LEA would otherwise have to provide from State or local funds would violate the supplement, not supplant requirement. The LEA, however, could use Chapter 2 funds to purchase supplemental textbooks without violating that requirement.

AVAILABILITY OF FUNDS

Statutory Requirements

Section 1574 of Chapter 2, 20 U.S.C. 2974; Section 412(b) of GEPA, 20 U.S.C. 1225(b).

Regulatory Requirements

Sections 76.703-76.707 of EDGAR.

Questions and Answers

1. When may SEAs and LEAs begin to obligate funds?

See Sections 76.703 and 76.704 of EDGAR.

2. When are obligations made?

See Section 76.707 of EDGAR.

3. For what period of time are Chapter 2 funds available for obligation by SEAs and LEAs?

Chapter 2 funds normally become available for obligation on July 1 and remain available until September 30 of the succeeding year. The obligation period is extended for an additional 12 months by the carryover provision in Section 412(b) of GEPA. As a result, Chapter 2 funds are available for obligation for up to 27 months. See also Section 76.705 of EDGAR.

4. Under Chapter 2, may unused State administration funds from one fiscal year be carried over until the end of the subsequent fiscal year?

Yes. Under Section 1521(b)(1) of Chapter 2 and Section 298.13(b)(1) of the regulations, an SEA may use no more than 25 percent of the Chapter 2 funds reserved for State use from a given fiscal year's Chapter 2 grant for State administration. In the event those funds are not obligated by an SEA during the fiscal year for which they are appropriated, the SEA may obligate those funds in the subsequent fiscal year. However, in no case may the amount

of funds expended for the administration of Chapter 2 from a given fiscal year's Chapter 2 grant exceed 25 percent of the funds retained by the SEA for its use from that grant.

5. What is the last year for which Chapter 2 funds are presently authorized for appropriation?

Chapter 2 is authorized through FY 1993. Funds appropriated in that year are generally used in school year 1993-94. If Congress does not take certain actions regarding the reauthorization of Chapter 2, the authorization would be automatically extended under Section 414 of GEPA, 20 U.S.C. 1226a. Thus, Congress could appropriate funds in FY 1994 for use in the 1994-95 school year.

FISCAL CONTROL AND FUND ACCOUNTING PROCEDURES

Statutory Requirements

Section 1575(c) of the ESEA, 20 U.S.C. 2975(c).

Section 435(b)(2) and (5) of GEPA, 20 U.S.C. 1232d(b)(2) and (5).

Section 436(b)(2) and (3) of GEPA, 20 U.S.C. 1232e(b)(2) and (3).

Regulatory Requirements

Section 298.2(b) of the regulations; 31 CFR Part 205.

Questions and Answers

1. **Are there any requirements that govern making cash advances to LEAs?**

Yes. Under the Treasury Regulations in 31 CFR Part 205, which govern withdrawing cash for advances under Federal grant programs, cash advances to a recipient organization, such as an SEA, must be limited to the minimum amounts needed and must be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out its project. See 31 CFR 205.4(a). According to Section 205.6, a recipient organization may initiate cash drawdowns only when needed for disbursement and must report on a timely basis cash disbursements and balances. That section also requires a recipient to impose the same standards of timing and amount upon any subrecipient organizations, such as LEAs. Under Section 205.4(e), recipient organizations must develop procedures whereby subrecipient organizations can obtain funds from the recipient organization as needed for disbursement.

2. **Are States required to comply with 34 CFR Part 80 of EDGAR in order to fulfill the fiscal control and fund accounting requirements under Chapter 2?**

No. The Department has not made 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applicable to

Chapter 2. Rather, Section 298.2(b) of the regulations requires States to have written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under Chapter 2. These requirements must meet three general criteria, set forth in Section 298.2(b)(1)(i)-(iii), that are designed to ensure the minimal standards necessary for proper management of Chapter 2 funds. A State may adopt new requirements, or may use requirements applicable to the use of its own funds. In the alternative, a State may apply the provisions in Part 80 to satisfy this requirement. A State has complete discretion to choose among these alternatives.

RECORDKEEPING

Statutory Requirements

The following sections contain the Chapter 2 recordkeeping requirements applicable to --

SEAs

Section 1522(a)(7) of Chapter 2, 20 U.S.C. 2932(a)(7).

Section 435(b)(5) of GEPA, 20 U.S.C. 1232d(b)(5).

Section 437(a) of GEPA, 20 U.S.C. 1232f(a).

LEAs

Section 1533(a)(4) of Chapter 2, 20 U.S.C. 2943(a)(4).

Section 436(b)(3) of GEPA, 20 U.S.C. 1232e(b)(3).

Section 437(a) of GEPA, 20 U.S.C. 1232f(a).

Regulatory Requirements

Section 298.15 of the regulations; Sections 76.730, 76.734 of EDGAR.

Questions and Answers

1. What records should SEAs and LEAs retain in order to be in compliance with the recordkeeping requirements in Chapter 2?

As indicated in Sections 1522(a)(7) and 1533(a)(4) of Chapter 2, SEAs and LEAs must keep records as may be required for fiscal audit and program evaluation. Such maintenance of records is essential if a State is to carry out its responsibility for conducting audits of the Chapter 2 program under the Single Audit Act of 1984.

Under Section 437(a) of GEPA, SEAs and LEAs must keep records that fully disclose the amount of Chapter 2 funds received; the use of the funds; the total cost of the Chapter 2 activity for which the funds are used; the share

of the cost, if any, provided from other sources; and such other records as will facilitate an effective audit. In addition, SEAs and LEAs should keep records that show compliance with Chapter 2 requirements, including the requirements for providing for the equitable participation of private school children under Section 1572, and data collected under Sections 1522(a)(6) and 1573. In addition, the SEA may impose on its LEAs additional requirements relating to recordkeeping.

2. For how long must SEAs and LEAs retain their records?

Section 437(a) of GEPA and Section 76.734 of EDGAR require SEAs and LEAs to retain records for five years after completion of the activity for which they use grant funds.

ANNUAL REPORT REQUIREMENTS

Statutory Requirements

Section 1522(a)(6)(A) of Chapter 2, 20 U.S.C. 2932(a)(6)(A).

Section 1573 of Chapter 2, 20 U.S.C. 2973.

Regulatory Requirement

Section 298.15 of the regulations

Questions and Answers

1. Are there any reporting requirements for SEAs and LEAs?

Yes. An LEA must report annually to the SEA on the LEA's use of Chapter 2 funds and any other information as may reasonably be required for the SEA to meet its reporting responsibilities. An SEA is required to submit annually to the Secretary a report covering the use of Chapter 2 funds by the SEA and its LEAs, the types of services provided, and the children to whom the services were provided.

2. Is there a required format for submitting the annual report to the Secretary?

No. SEAs are not required to use a standard format. However, to assist SEAs in fulfilling their reporting requirements under Chapter 2, the Secretary, in consultation with representatives of SEAs and LEAs, has developed a model format which may be used.

3. What is the timetable for SEAs to submit their annual reports to the Secretary?

The Secretary, along with SEA and LEA representatives, has developed a timetable for the collection and reporting of data. The Secretary asks that each SEA submit its annual report in December for activities conducted in the previous school year. For example, data collected for the 1989-90 school year would be due to the Secretary in December 1990. Likewise, data collected on school year 90-91 would be due in December 1991.

School YearSEA Annual Reports

1989-90

Establish LEA-SEA
collection mechanism

Collect data on SY 89-90

1990-91

Collect data on SY 90-91
Report to the Secretary
on SY 89-90 (Due 12/90)

1991-92

Collect data on SY 91-92
Report to the Secretary
on SY 90-91 (Due 12/91)

1992-93

Collect data on SY 92-93
Report to the Secretary
on SY 91-92 (Due 12/92)

EVALUATION OF THE EFFECTIVENESS OF STATE AND LOCAL PROGRAMS

Statutory Requirements

Section 1522(a)(6)(B) of Chapter 2, 20 U.S.C. 2932(a)(6)(B).

Section 1533(a)(4) of Chapter 2, 20 U.S.C. 2943(a)(4).

Section 1573(b) of Chapter 2, 20 U.S.C. 2973(b).

Regulatory Requirement

Section 298.15(b)(2) of the regulations.

Questions and Answers

1. **Are SEAs and LEAs required to evaluate the effectiveness of their programs funded with Chapter 2 funds?**

Yes. Sections 1522(a)(6)(B) and 1573(b) of Chapter 2 require an SEA to conduct a formal evaluation which assesses the effectiveness of State and local programs funded under Chapter 2. Section 1533(a)(4) requires an LEA to keep records and provide such information to the SEA as reasonably may be required for program evaluation.

2. **Must an SEA evaluate the effectiveness of State-level programs as well as local programs?**

Yes. An SEA must evaluate the effectiveness of State-administered programs as well as local programs. The evaluation must be submitted for review and comment by the State Advisory Committee and must be made available to the public. The SEA must submit to the Secretary a copy of the evaluation and a summary of the annual reports of the LEAs. See Section 1573(b) of Chapter 2.

3. **How can an SEA evaluate its LEAs' programs given that LEAs have complete discretion concerning how they divide their funds among the purposes of Chapter 2?**

The discretion afforded LEAs under Section 1533(c) of Chapter 2 does not absolve an SEA of its responsibility to evaluate the effectiveness of the Chapter 2 programs carried out within the State. Rather, the SEA must evaluate the Chapter 2 programs that its LEAs have chosen to conduct. The Department, in conjunction with representatives of SEAs and LEAs, has prepared guidance that an SEA may use in fulfilling this requirement. This guidance has been provided to each SEA along with training in its use.

4. **Must the evaluation required by Section 1573(b) include an evaluation of the services provided to children in private schools?**

Yes. There is no provision in Chapter 2 for excluding from the evaluation an assessment of the effectiveness of the services provided to children in private schools. Each LEA should evaluate the Chapter 2 services provided to private school children along with the Chapter 2 services it provides to public school children.

5. **Is there a recommended schedule SEAs should follow in completing their evaluation?**

Yes. The Secretary summarizes SEAs' evaluations and reports to Congress not later than October 1, 1992. As a result, the Secretary, in consultation with representatives of SEAs and LEAs, has developed the following recommended schedule:

- o SEAs should have designed and field tested their evaluation instrument by the end of the 1989-90 school year.
- o Data collection should take place during school year 1990-91.
- o Each SEA's completed evaluation is due to the Secretary by March 1992.
- o The Secretary, in turn, summarizes the evaluations and reports to Congress no later than October 1992.

6. **May the data collection for the evaluation cover more than one year?**

SEAs are only expected to collect evaluation data for the 1990-91 school year. However, SEAs may supplement this data with data from the previous year if they so desire.

7. Must the scope of the evaluation include activities from all of the six targeted areas?

The scope of the evaluation may, but need not, include all activities funded under Chapter 2. The SEA may choose to focus on those targeted areas that receive most of the Chapter 2 funding, are most widespread, or most closely relate to significant State needs. For example, an SEA may decide to examine local activities concerning the acquisition of instructional materials because nearly all LEAs in the State use funds for this purpose. Similarly, the SEA may choose to concentrate on at-risk programs because they are addressing a significant problem in the State. The SEA must identify the specific targets of the evaluation and justify the selection.

FEDERAL AUDITS AND ACCESS TO RECORDS

Statutory Requirements

The following sections pertain to Federal audits and access to records:

Section 1522(a)(7) of Chapter 2, 20 U.S.C. 2932(a)(7).

Section 1533(a)(4) of Chapter 2, 20 U.S.C. 2943(a)(4).

Section 437(b) of GEPA, 20 U.S.C. 1232f(b).

Section 452 of GEPA, 20 U.S.C. 1234a.

Regulatory Requirement

Section 298.15 of the regulations.

STATE AUDITS

Statutory Requirement

The Single Audit Act of 1984, 31 U.S.C. 7501 et seq.

Regulatory Requirement

Appendix to 34 CFR Part 80.

Questions and Answers

1. Do the audit requirements in the Single Audit Act of 1984 apply to Chapter 2?

Yes. The Single Audit Act of 1984 applies to any of a State's fiscal years beginning after December 31, 1984.

2. May SEAs and LEAs use Chapter 2 funds to pay for the entire cost of the organization-wide audits required by the Single Audit Act?

No. However, the costs of the organization-wide audits may be charged to the respective programs being audited as direct or indirect administrative costs. A proportionate share of the audit costs, therefore, may be charged to Chapter 2. At the State level, these costs would be costs of administering the Chapter 2 program under Sections 1521(a)(1) and (b)(1) of Chapter 2.

3. What does the Single Audit Act of 1984 require?

According to the Appendix to Part 80, the Single Audit Act of 1984 requires that an independent auditor annually audit SEAs or LEAs receiving \$100,000 or more a year in Federal assistance for internal control and compliance. Those receiving between \$25,000 and \$100,000 a year have the option of participating in the single audit or an audit in accordance with the requirements of the programs in which they participate. State or local governments receiving less than \$25,000 a year are governed by audit requirements prescribed by State or local law or regulation. Under a single audit, each major Federal assistance program is tested for representative charges based on the auditor's judgment.

4. To whom should audit reports be submitted?

Auditors submit the audit report to the organization audited following the audit. (When an LEA is audited, a copy of the report also goes to the SEA.) The recipient submits copies of the report to each Federal agency providing program funds. Recipients of more than \$100,000 in Federal funds must submit a copy to the following clearinghouse designated by OMB: Data Preparation Division, U.S. Bureau of the Census, 1202 East 10th Street, Jeffersonville, Indiana 47132.

5. How can recipients of Federal education funds prepare for successful audits?

Ongoing activities that can develop audit readiness include the following:

- o Establishing internal controls.
- o Complying with Federal requirements.
- o Maintaining records.
- o Requesting internal audits.

Internal controls should be examined according to the following questions:

- o Do payroll records support charges to Federal funds?
- o Are procedures in place to verify that charges are allowable under grant or contract provisions?
- o Are procedures adequate to verify that program participants are eligible?
- o Do corrective actions result from monitoring activities?

Examples of types of compliance requirements applicable to U.S. Department of Education programs include the following:

- o Charges for direct labor to Federal grants.
- o Treatment of grant-related income.
- o Reporting of financial status.
- o Eligibility of participants.
- o Monitoring of activities.
- o Allowability of services.

Records related to federally funded activities involving any portion of an audit process initiated prior to the end of the record retention period must be retained until the audit, audit resolution, or audit appeal has been completed. Recordkeeping should establish an audit trail beginning with the preparation of the application and should include records to support the application. Internal audits can also help determine whether

adequate administrative and accounting controls are in place.

NOTE: The above information was taken from a brochure prepared by the Office of Inspector General entitled "Audit Readiness for Recipients of Federal Education Funds." This brochure contains other helpful advice and may be obtained by writing to the Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-1500.

GRANTBACKS

Statutory Requirements

Section 459 of GEPA

(Note: With respect to final audit determinations received by States prior to October 25, 1988, grantbacks are governed by Section 456 of GEPA as in effect prior to the Hawkins-Stafford Act).

Questions and Answers

1. What is a "grantback"?

In cases where ED has recovered funds from an SEA or LEA that misspent Chapter 2 funds or failed to account properly for those funds, the SEA may request a "grantback," under which the Secretary is authorized to pay to the SEA or LEA an amount back that may not exceed 75 percent of the recovered funds.

2. What requirements must be met for the Secretary to award a grantback?

If an SEA wishes to request a grantback of Chapter 2 funds, the Chief State School Officer should submit the following to the Assistant Secretary for Elementary and Secondary Education:

- o A letter that--

- a. Requests the repayment of funds;

- b. Provides assurances that---

- (1) The practices in the SEA or LEA that resulted in the violation of law have been corrected; and

- (2) The Chapter 2 program in the SEA or LEA has been reviewed during the current school year, and the SEA has determined that it is in compliance with all applicable Chapter 2 requirements.

- o A detailed explanation, including documentation, if available, of actions taken to correct the specific violations.

- o A plan for the use of grantback funds that--

- a. Meets the requirements of Chapter 2;
- b. To the extent possible, benefits the Chapter 2 children who were affected by the failure to comply or by the misuse of funds that resulted in the recovery. (If a time lapse makes it impossible to serve the same children, the plan must justify use of funds for the benefit of current participating Chapter 2 children);
- c. Shows that the use of the funds would achieve the purposes of Chapter 2; and
- d. Includes the following:
 - (1) An identification of the recipient(s) of the grantback funds.
 - (2) A brief description of the current Chapter 2 program.
 - (3) A detailed description of the activities to be provided with grantbacks funds and how these activities would supplement the regular Chapter 2 program.
 - (4) An itemized budget that shows how the recipient(s) would spend the funds on the proposed activities.
 - (5) The beginning and ending dates of the project period.
 - (6) Evidence that parents or representatives of the children who would benefit from the grantback funds were consulted in planning the program.
 - (7) A description of how equitable services would be provided to private school children.
- o Evidence that the SEA has fully satisfied its financial liability or has entered into a repayment agreement with ED. It is important for the SEA to address any other outstanding debts with ED by making payment or by entering into a repayment agreement with ED before requesting a grantback of Chapter 2 funds.
- o If funds were repaid to ED as the result of LEA audit findings under the Single Audit Act, audit materials

that provide the basis for a step-by-step description of how the audit determinations were resolved by the SEA.

3. How long does it take to get a grantback?

From the time ED receives an approvable plan (one that incorporates the above requirements), it usually takes three to four months to complete the process. Thus, when a decision is made to request a grantback, the necessary actions should be initiated as soon as possible in order to avoid a possible delay in beginning the activities.

4. What is the period of availability for the use of grantback funds?

The period of availability is based on the Federal fiscal year, which ends on September 30. Grantback funds may remain available for expenditure for no more than three fiscal years following the fiscal year in which final agency action occurs. For example, if a final action occurred on November 25, 1989 (FY 1990), the period of availability would last until September 30, 1993.

5. What constitutes "final agency action" in determining the period of availability?

For final audit determinations received by a State prior to October 25, 1988, the period of availability is determined from the last applicable event of the following:

- o The issuance of the final determination letter by the appropriate official in ED. (If no final determination letter was issued, then the date that repayment was made.)
- o A decision by the Education Appeal Board (EAB) upholding the audit determination.
- o Sixty days after receipt of the EAB's decision; or 60 days after the Secretary's action modifying or setting aside the EAB's decision.
- o A negotiated settlement and/or repayment agreement between ED and the SEA while a case is under administrative or judicial review pursuant to Section 455 of GEPA.

- o A final decision by the United States Court of Appeals for the circuit in which the SEA or LEA is located, or by the United States Supreme Court, upholding the audit determination.

Final agency action for a program determination received by a State on or after October 25, 1988 is the last applicable event of the following:

- o The issuance of written notice of a disallowance decision issued by an authorized Department official. (If no disallowance decision was issued, then the date that repayment was made.)
- o A decision by the Office of Administrative Law Judges (OALJ) upholding the disallowance decision.
- o Sixty days after receipt of the OALJ's decision; or receipt of the Secretary's decision modifying or setting aside the OALJ's decision.
- o A negotiated settlement and/or repayment agreement between ED and the SEA while a case is under administrative review.

NOTE: For program determinations received by a State on or after October 25, 1988, which are appealed to court, "final agency action" is the last applicable administrative action listed above, not any subsequent court decision or other action taken during judicial review.

6. What are the terms and conditions to which a grantback payment is subject during and after the project period?

Section 459(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the program. These include, but are not limited to, the following:

- o The funds awarded under the grantback must be spent in accordance with--
 - a. All applicable statutory and regulatory requirements;
 - b. The plan submitted by the SEA or LEA for the use of the funds and any amendments to that plan that are approved by the Secretary; and

- c. The budget included in the plan and any amendments to the budget approved by the Secretary.
 - o All the funds awarded under the grantback must be obligated within the project period included in the plan.
 - o Separate accounting records must be maintained documenting the expenditure of the repaid funds.
 - o A report must be submitted to the Secretary no later than 90 days after the completion of the project that indicates that the funds were spent in accordance with the plan and the budget included in the plan.
7. What public notification is made that the Secretary intends to award a grantback?

The Secretary must publish a notice in the Federal Register 30 days prior to making a grantback payment. The notice explains the terms and conditions under which payment will be made and describes the plan for the use of funds. During the 30-day period, interested persons may submit comments regarding the proposed arrangement.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

Statutory Requirement

Section 1572(a)-(c) of Chapter 2, 20 U.S.C. 2972(a)-(c).

Regulatory Requirement

Sections 298.31-298.37 of the regulations.

Questions and Answers

1. Must an LEA serve children attending a private school in its geographic area even if the children reside in another district of the State, or in another State?

Yes. The LEA must provide Chapter 2 benefits to children enrolled in private schools within the LEA, regardless of where those children reside. See Section 298.31(a) of the regulations.

2. If a private educational institution is considered a private, nonprofit elementary or secondary school under State law, may an LEA decline to serve children in that school because it does not meet other State laws?

Section 1572(a) of Chapter 2 requires an LEA to provide services to children in private, nonprofit elementary and secondary schools in the LEA. As a result, if the private educational institution qualifies as a private, nonprofit elementary or secondary school under State law and is in compliance with applicable Federal statutes and regulations, Section 1572(a) requires the LEA to provide Chapter 2 services to the children in that school regardless of whether the school complies with other State laws.

3. Must an LEA provide Chapter 2 services to children in all the private schools in its attendance area--even if an individual private school does not want its children to receive Chapter 2 services?

An LEA is not required to provide Chapter 2 services to children in a private school where representatives of those children have indicated a desire that their children not participate in Chapter 2 programs.

4. What duty does an LEA have to notify private school officials that children enrolled in private schools in the LEA are eligible to receive Chapter 2 benefits and services?

Sections 1512(b) and 1572(a) of Chapter 2 and Section 298.32 of the regulations require an LEA receiving Chapter 2 funds to consult annually with appropriate private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decisions that affect the opportunities of private school children to participate in the program. This consultation includes notice to private school officials of the Chapter 2 services and benefits that private school children are eligible to receive. The LEA, however, has considerable flexibility in deciding what form this notice should take.

5. How do LEAs assure that they will serve children enrolled in private schools?

Section 1533(a)(3) of Chapter 2 requires an LEA to provide an assurance in its Chapter 2 application that it is in compliance with the provisions of Chapter 2, including the participation of children enrolled in private nonprofit schools.

6. May an LEA require assurance from private school officials with respect to compliance with the Chapter 2 requirements as a condition for participation in the program?

An LEA may not require assurance from private school officials with respect to compliance with the Chapter 2 requirements as a condition for participation in the program. Under Section 298.31(a)(1) of the regulations, it is the responsibility of the LEA to ensure that the services, materials and equipment it is providing for the benefit of private school children are being used in accordance with all applicable requirements. Many LEAs have found it helpful, however, to request voluntary assurances from private school officials to reinforce Chapter 2 requirements such as the requirement that equipment and materials provided for the benefit of private school children must be used for secular, neutral, and nonideological purposes.

7. What is the nature of the Chapter 2 requirement that an LEA must consult with appropriate private school officials?

Section 298.32 of the regulations requires an LEA receiving Chapter 2 funds to consult annually with participating private school officials regarding the development and implementation of the Chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program. This consultation with private school officials would include such matters as the nature and scope of the Chapter 2 program, identification of student needs, the types of

benefits to be provided children in private schools, and the manner in which those benefits will be provided.

8. Who decides what Chapter 2 services children in private schools receive?

Section 1572(a) of Chapter 2 provides that the LEA, after consultation with appropriate private school officials, shall provide Chapter 2 services, materials, and equipment for the benefit of children in private schools. If such services are not feasible or necessary, as determined by the LEA after consultation with appropriate private school officials, the LEA must provide other arrangements as will assure equitable participation. See Section 1572(a)(1) of Chapter 2. Thus, it is the LEA that ultimately determines what services the children in private schools will receive. This determination, however, cannot be made without consultation with appropriate private school officials. See Section 298.32 of the regulations. Moreover, the services provided to the children in private schools must be equitable to those provided to children in public schools. See Section 298.34 of the regulations. The services provided to children in private schools must also be feasible and necessary or, under Section 1572(a)(1), the LEA must provide other arrangements.

If private school officials believe that their children are not receiving equitable services under Chapter 2, those officials should voice their concerns to the LEA. If those concerns are not resolved, the private school officials should contact the SEA. If resolution is not possible at the local or State level, the private school officials may contact the Department.

9. May an LEA decide what Chapter 2 services it will provide to its public school children and then provide only those services to the children enrolled in private schools?

In accordance with Section 1572(a)(1) of Chapter 2 and Section 298.34(b)(2)(iii) of the regulations, an LEA must provide Chapter 2 services for the private school children that address their needs, even if those needs are different from the needs of the children enrolled in the public schools.

10. If an LEA restricts its Chapter 2 activities to a grade level or program area, may the LEA restrict the participation of private school children to the same grade level or program area?

Section 1572(b) of Chapter 2 states that when an LEA uses Chapter 2 funds to concentrate on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance areas, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of the Chapter 2 program. When read in conjunction with the provision in Section 1572(a)(1) of Chapter 2 that requires other arrangements if the needs of the private school children are different, it appears that Section 1572(b) entitles those private school children with similar needs in the same group, attendance area, or grade or age level to receive Chapter 2 services, but does not excuse the LEA from providing other arrangements to other groups, attendance areas, or grade or age levels if the needs of the private school children are different.

11. If an LEA spends all of its Chapter 2 funds on programs that serve children in public high schools and there are no children in private high schools in the LEA, must the LEA serve other children attending private schools in the LEA?

Under Sections 1512 and 1572 of Chapter 2, an LEA receives Chapter 2 funds, in part, based on the relative enrollments in public and participating private, nonprofit schools within the LEA and has the responsibility to provide equitable services to the children enrolled in private schools. This responsibility exists, in accordance with Section 1572(a)(1), even though there may be no children in private schools at the same grade levels at which children in the public schools are being served.

12. May an LEA use Chapter 2 funds to provide services that supplant the services already being provided by a private school?

No. See Sections 298.23 and 298.35(a) of the regulations.

13. **Is an LEA responsible for monitoring the Chapter 2 program for children in private schools?**

Yes. Under Section 1572(a) of Chapter 2, the LEA must ensure that the services, materials, and equipment provided to children in private schools are secular, neutral, and nonideological and that they are used in accordance with all applicable requirements. See Section 298.36(c)(2) of the regulations.

14. **May Chapter 2 funds be allocated directly to the private schools?**

No. Section 1572(c) of Chapter 2 and Sections 298.31(a)(3) and 298.36(a) of the regulations require that control and administration of Chapter 2 funds must be in a public agency.

15. **Must persons providing services to private school children be employees of an LEA?**

Section 1572(c)(2) of Chapter 2 and Section 298.31(a)(4) of the regulations require Chapter 2 services to be provided by employees of a public agency or through contracts by such public agency with a person, association, agency, or corporation that is independent of the private school and of any religious organization. Such employment or contracts must be under the control and supervision of the public agency. This requirement does not preclude an LEA from hiring private school teachers to provide Chapter 2 services to private school children outside the teachers' regularly scheduled hours.

16. **If Chapter 2 funds are used to pay stipends to public school teachers attending Chapter 2 inservice training projects, may Chapter 2 funds also be used to pay stipends to private school teachers attending such projects?**

In order to ensure equitable participation of private school teachers under Section 1572, Chapter 2 funds may be used to pay stipends to private school teachers attending Chapter 2 inservices training projects if the following conditions exist:

1. There is a genuine need to pay stipends for both public and private school teachers. For example, if the inservice training is conducted during after-school hours or during the summer, the stipends may, in effect, be payment for the participant's time after regular employment hours.

2. The stipends for private school teachers are provided on the same basis as those provided to public school teachers.
 3. The stipends must be paid to the private school teacher for the use of the private school teacher and not for the benefit of a private school. A stipend due a private school teacher may not be transmitted by the public school system, or turned over by the private school teacher, to a private school.
17. May Chapter 2 funds be used to pay for substitute teachers who replace private school teachers attending Chapter 2 training programs?

No. Nothing in Section 1572(a) of Chapter 2 authorizes paying with Chapter 2 funds substitute teachers who replace private school teachers attending Chapter 2 training programs. Section 1572(a) provides that Chapter 2 funds be used only for services, materials, and equipment for children in private schools, and for training programs for the teachers of such children. That section does not authorize payments to private schools to be used for hiring substitute teachers, even though those substitute teachers are needed because of a Chapter 2 teacher training program. However, when the participation of private school teachers will be precluded by the private school's inability to pay for substitutes, the LEA should make other arrangements to ensure the equitable participation of those teachers.

18. Is it necessary for an LEA to include the parents of children enrolled in private schools as well as private school personnel in the consultation process?

Section 1533(a)(5) of Chapter 2 requires an LEA to provide, "in the allocation of [Chapter 2] funds ... and in the design, planning, and implementation of [Chapter 2] programs, for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, [and] with teachers and administrative personnel in such schools." This requirement does not distinguish between parents of public and private school children. Thus, all parents are to be included in the consultation process. This requirement also includes private school teachers and administrative personnel. See Section 298.6(c)(1)-(2) of the regulations. Moreover, Section 1572(a) of Chapter 2 and Section 298.32 of the regulations address consultation with appropriate private school officials.

19. Does the requirement for the equitable participation of private school children and teachers in the benefits provided by Chapter 2 apply to funds the State reserves for its own use?

Yes. Section 1522(a)(3)(B) of Chapter 2 requires that the State include in its application the allocation of funds required to implement the requirements of Section 1572. Section 1572 provides that, with respect to instructional or personnel training programs funded by the SEA from funds reserved for the State's use under Section 1512, the SEA, after consultation with appropriate private school officials, shall provide for the participation of private school children and teachers (and other educational personnel) in the SEA's programs.

20. When are the requirements concerning the participation of children and teachers in private schools triggered for the Chapter 2 programs carried out with funds reserved for the State's use?

Section 1572(a) of Chapter 2 requires an SEA to provide for the participation, on an equitable basis, of children and teachers (and other educational personnel serving such children) in private schools if it conducts instructional or personnel training programs. Therefore, under Section 298.31(b)(2) of the regulations, once an SEA decides to conduct such programs, the SEA must comply with the requirements in Sections 298.31-298.37 of the Chapter 2 regulations concerning the participation of children enrolled in private schools as if the SEA were an LEA. These regulatory provisions include the requirement concerning consultation with private school officials before making any decision that affects the opportunities of private school children or teachers to participate in the Chapter 2 instructional or personnel training programs to be conducted by the SEA.

21. If an SEA invites private school teachers and other educational personnel to attend all of its Chapter 2 teacher training activities, has the SEA fulfilled the equitable participation requirement of Section 1572?

No. Section 1572 of Chapter 2 requires that the SEA consult with appropriate private school officials concerning the training activities it plans to offer to ascertain whether those activities are responsive to the needs of the private

school teachers and other educational personnel. If their needs differ from the needs of the public school teachers, Section 1572(a)(1) requires the SEA to make other arrangements to ensure the equitable participation of private school teachers and other educational personnel.

22. What disposition should be made of the equipment and materials acquired by LEAs under ESEA Title IV-B or Chapter 2 of the ECIA that have been placed on the premises of private schools for the benefit of private school children?

The implementation of Chapter 2 of the ESEA does not require SEAs and LEAs to recall equipment and materials loaned for the benefit of private school children under Chapter 2 of the ECIA or Title IV if those children continue to receive benefits under Chapter 2 of the ESEA. Rather, such equipment and materials may remain on private school premises as long as they are needed and are used in accordance with the provisions of Chapter 2. SEAs and LEAs must continue to maintain inventory and control of this equipment.

23. If an SEA uses a portion of the funds reserved for the State's use to award discretionary grants that pertain to instructional or teacher training programs, must the recipients of those grants -- e.g., institutions of higher education -- provide equitable services to children and teachers in private schools?

Yes. An SEA cannot obviate its responsibility to serve children or teachers in private schools by awarding discretionary grants to organizations or institutions that otherwise would not have an obligation to serve such children or teachers.

24. If an LEA chooses not to apply for Chapter 2 funds, how do private school children in that LEA receive Chapter 2 benefits?

Section 1572(a)(2) of Chapter 2 provides that, if an LEA does not operate a Chapter 2 program, the SEA must make arrangements -- such as through contracts with nonprofit agencies or organizations -- under which children are provided with services and materials to the extent that would have occurred if the LEA had received Chapter 2 funds. The SEA may pay for these arrangements from the allocation the LEA would have received before the SEA reallocates the remainder of those funds to other LEAs.

25. May an LEA charge the administrative costs for implementing and monitoring activities for private school children to the Chapter 2 funds it expends for services to those children?

Reasonable administrative costs for providing Chapter 2 services to private school children as well as public school children may be paid from the LEA's Chapter 2 allocation. These costs, however, are paid from the LEA's overall Chapter 2 allocation rather than from the specific funds for public or private school children.

26. Under what circumstances, if any, may Chapter 2 per pupil expenditures for services to public and private school children differ?

Section 1572(b) of Chapter 2 requires that--

Expenditures for programs [for children in private schools] shall be equal (consistent with the number of children to be served) to expenditures for programs under [Chapter 2] for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures...
(emphasis added)

Section 298.34(a)(2)(ii) of the Chapter 2 regulations implements the limited exception to the equal expenditure requirement in Section 1572(b): in determining whether expenditures are equal, an LEA "[m]ay take into account differences in the costs per child of meeting the needs of the individual children to be served and other factors that relate to these expenditures...."

It is important to emphasize that Chapter 2 requires an LEA to ensure that private school children participate in the benefits of Chapter 2 on an equitable basis with public school children. Generally, this requirement is met by expending equal per pupil amounts of Chapter 2 funds on children in both public and private schools. Certain circumstances, however, may necessitate an LEA expending unequal amounts of Chapter 2 funds on children in public or private schools if the costs of meeting their Chapter 2 needs are different.

Section 298.34(a)(2)(ii) of the regulations does not contemplate that an LEA will set out to spend unequal amounts of Chapter 2 funds on public and private school children. Rather, an LEA should determine the needs of public and private school children that the LEA will use Chapter 2 funds to address. The LEA then should determine the costs of meeting the needs to be addressed with the

Chapter 2 funds. If the costs of meeting the Chapter 2 needs differ, Section 298.34(a)(2)(ii) permits the LEA to spend unequal per pupil amounts on public and private school children.

For example, an LEA may decide to use Chapter 2 funds to meet the remedial reading needs of public school children by providing tutorial instruction in remedial reading. If the per pupil costs of providing the tutorial instruction in remedial reading are greater than the per pupil costs of providing science enrichment to private school children, for example, Section 298.34(a)(2)(ii) permits the LEA to spend more per pupil on the public school children than on the private school children. Of course, Section 298.34(a)(2)(ii) also permits the LEA to spend more per pupil on private school children if their Chapter 2 needs are more costly. In either case, the LEA should be mindful that whatever services it provides to children in private schools must be equitable to the services provided to children in public schools.

27. May all authorized Chapter 2 activities be provided for the benefit of private school children?

No. As stated in Section 298.35(b) of the regulations, an LEA must use Chapter 2 funds to meet the needs of children enrolled in private schools, and may not use those funds for the purpose of aiding the private school. Thus, any Chapter 2 activities whose benefits would inure to the private school rather than directly to the private school children would be unallowable. For example, it is not likely that effective schools programs under Section 1542 could be provided for the benefit of private school children.

28. Who is responsible for replacing lost or damaged equipment purchased with Chapter 2 funds for the benefit of private school children?

The LEA would be responsible for replacing lost or damaged equipment purchased with Chapter 2 funds for the benefit of private school children. The LEA could replace that equipment, however, with Chapter 2 funds.

29. Who is responsible for carrying insurance on Chapter 2 equipment provided for the benefit of private school children?

Chapter 2 does not require that equipment be insured. Any insurance that is carried, however, would be carried by the

LEA because the LEA holds title to and exercises control over equipment provided for the benefit of private school children. Presumably, the LEA's policy would cover all of its Chapter 2 equipment. The LEA may pay for the proportionate share of that insurance from the Chapter 2 funds available for services to private school children.

30. **What methods may an LEA use to discharge its responsibility to exercise administrative direction and control over Chapter 2 equipment and materials provided for the benefit of private school children?**

Under Section 298.31(a)(3) of the regulations, an LEA must exercise administrative direction and control over Chapter 2 funds and property that benefit private school children in the LEA. Similarly, Section 298.36 requires a public agency to keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 2 funds. As part of the responsibility, the LEA must ensure that the equipment and supplies are used for secular, neutral, and nonideological purposes (Sections 298.31(a)(1), 298.36(c)(2)), supplement the level of services that would, in the absence of the Chapter 2 services, be available to children in a private school (Section 298.35(a)), and meet the needs of the private school children, not the needs of the private school (Section 298.35(b)). Each LEA should make certain that private school officials whose children are participating in Chapter 2 are aware of the Chapter 2 requirements. The LEA may wish to obtain an assurance from those officials that they will comply with these requirements. Further, to carry out its responsibilities under the statute and regulations, an LEA should mark all equipment and supplies purchased with Chapter 2 funds so that they are clearly identifiable as Chapter 2 property. The LEA should also maintain an up-to-date inventory of all Chapter 2 equipment and supplies provided for the benefit of private school children. Before providing any books and materials for the benefit of private school children, the LEA should screen them to ensure that they are secular, neutral, and nonideological. In addition, the LEA should perform periodic on-site monitoring of the Chapter 2 equipment and materials to ensure that they are being used exclusively for secular, neutral, and nonideological purposes and for the benefit of private school children, not private schools. Finally, the LEA may suggest to private school officials that they have their personnel keep logs documenting the use of Chapter 2 equipment and secure the Chapter 2 equipment in a separate, locked area when not being used for appropriate Chapter 2 purposes.

31. If a private school moves from the geographic area served by one LEA to the geographic area served by another LEA what disposition should be made of the Chapter 2 equipment and materials on loan to the private school?

Because the LEA holds title to and exercises control over the Chapter 2 equipment and materials, they should be returned to the LEA for distribution among participating public and private school children.

32. If private school officials decide that they no longer desire that their children participate in Chapter 2, what should the LEA do with any Chapter 2 equipment and supplies on loan to those children?

If private school officials no longer desire that their children participate in Chapter 2, the LEA should collect any Chapter 2 equipment and supplies and distribute them among participating public and private school children. Any equipment and supplies no longer usable may be disposed of in accordance with the procedures in Part 80 of EDGAR or in accordance with State procedures under Section 298.2(b)(1).

33. May an LEA require private school officials to file an application with the LEA in order to receive Chapter 2 benefits for the children attending private schools?

SEAs and LEAs are the only eligible applicants for Chapter 2 funds. It would not be appropriate, therefore, for an LEA to require private school officials to file applications to obtain services for their children. However, LEAs may solicit documentation needed to identify appropriate Chapter 2 benefits to be provided to private school children and to certify the eligibility of the private school to have its children participate in Chapter 2.

34. If an intermediate unit (IU) provides benefits for private school children within its geographic area, may indirect costs and other administrative costs be deducted from the amounts made available for services to the private school children?

Because of the requirements for equal expenditures and equitable participation of private school children, indirect costs and other administrative costs may be deducted only to the extent that the individual LEA in which the private school is located is charging such costs of providing Chapter 2 benefits to public school children.

35. If an IU provides benefits to private school children within its geographic area, may the IU compute per pupil expenditures on an equal basis for all children attending private schools within the geographic area?

No, unless all the private schools are located within the same school district. Generally, an IU is comprised of a number of LEAs. Per pupil expenditures must be determined for each LEA located within the IU. Thus, the amount available for benefits to children in a private school would be equal to the Chapter 2 per pupil expenditures for benefits for public school children in the particular LEA in which the private school is located.

36. Who is responsible for evaluating the Chapter 2 benefits private school children receive?

The responsibility for evaluating the programs assisted under Chapter 2 is assigned to the SEA by Section 1522(a)(6)(B). An LEA is required by Section 1533(a)(4) to keep such records as the SEA may reasonably require for program evaluation. Thus, it is the LEA's responsibility to include in its records evaluation information about the Chapter 2 benefits provided to private school children. In fulfilling this responsibility, the LEA may request the private school to submit information that will assist the LEA in its evaluation.

37. Does the equal expenditure requirement apply to personnel training programs conducted with Chapter 2 funds reserved for the State's use?

Yes. Thus, expenditures for personnel training programs for public and private school teachers and other educational personnel must be equal, unless unequal expenditures are justified on the basis of the different costs of addressing different needs.

38. If an LEA files an application for a three-year period, must the LEA contact officials of private schools each year to determine if they desire that their children participate in Chapter 2?

Section 1521(b) of Chapter 2 makes clear that it is the LEA's responsibility "to contact, on an annual basis, appropriate officials from private nonprofit schools within the areas served by such agencies to determine whether such schools desire that their children participate in [Chapter 2] programs...."

39. What effect, if any, does the U.S. Supreme Court's decision in Aguilar v. Felton have on the provision of Chapter 2 benefits to children in private schools?

On July 1, 1985, the U.S. Supreme Court held in Aguilar v. Felton that instructional services under Chapter 1 of the ECIA cannot be provided on the premises of religiously affiliated private schools. That decision, however, should not be extended beyond the circumstances clearly addressed by that case.

The Supreme Court has recognized that the implications of one decision under the Establishment Clause for other cases presenting different facts and circumstances are not always clear. As the Supreme Court stated in Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646, 662 (1980), there is no "litmus-paper test to distinguish permissible from impermissible aid to religiously oriented schools." The Court further acknowledged that its "decisions have tended to avoid categorical imperatives and absolute approaches at either end of the range of possible outcomes" and that "[t]his course sacrifices clarity and predictability for flexibility...."

It would, therefore, be presumptuous for educational authorities to extend the Felton decision beyond the circumstances clearly addressed by that case. The Supreme Court in Felton, for example, did not address the placement of equipment and materials under Chapter 2 on the premises of religiously affiliated private schools. Therefore, it is the Department's position that Chapter 2 funds may continue to be used for equipment and materials placed on private school premises. In the case of instructional services provided on private school premises under Chapter 2, State and local officials should carefully review these instructional services in light of the Felton decision to determine whether they are so similar to those at issue in Felton as to require modification.

BY-PASS PROCEDURES

Statutory Requirements

Section 1572(d)-(i) of Chapter 2, 20 U.S.C. 2972(d)-(i).

Regulatory Requirements

Section 298.38 of the regulations.

Sections 76.670-76.677 of EDGAR.

Questions and Answers

1. What is a "by-pass"?

By-pass is the term applied to arrangements made by the Secretary to provide services on an equitable basis to private school children when the Secretary determines that an SEA or LEA is precluded from providing such services by State law, or has substantially failed or is unwilling to provide the services.

2. How is a by-pass initiated?

A representative of a private school child may register a complaint with the Department that an SEA or LEA has substantially failed to provide equitable Chapter 2 services; an LEA or SEA may voluntarily notify the Department that the LEA or SEA is prohibited from or unable to provide such services; or the Department through its monitoring function may determine that an SEA or LEA has substantially failed to provide equitable services.

3. May a complainant complain directly to the Secretary that private school children are not receiving Chapter 2 services on an equitable basis?

Yes, although as a practical matter, any perceived deficiencies in Chapter 2 services to private school children are more easily resolved at the local and/or State level first.

4. What are the steps leading to a by-pass?

If a complaint is received by the Secretary and an investigation finds that an SEA or LEA has substantially failed or is unwilling to provide services on an equitable basis to private school children, the Secretary informs the LEA and SEA that a by-pass will be invoked. The number of subsequent steps and amount of time necessary to provide services through a by-pass vary depending on whether the LEA or SEA wishes to appeal. The specific steps are found in Section 1572(h) of Chapter 2 and Sections 76.670-76.677 of EDGAR.

5. When the Secretary arranges for a by-pass, from what allocation do the administrative and program funds come?

According to Section 1572(g) of Chapter 2, the Secretary shall pay the costs of providing services to private school children through a by-pass, including the administrative costs of arranging for those services, from the appropriate allotment of the State. The Secretary determines the appropriate allotment according to the reason for the by-pass. For example, if the Secretary must establish a by-pass of an entire State because the State is prohibited by law from providing services to private school children, the costs of providing such services will be taken from the State's total Chapter 2 allocation. On the other hand, if the Secretary must establish a by-pass of an LEA because the LEA has substantially failed to provide for the participation of private school children on an equitable basis, the costs of providing such services will be taken from the LEA's Chapter 2 allocation.

INSULAR AREAS

Statutory Requirement

Section 1511(a) of Chapter 2, 20 U.S.C. 2921(a).

Regulatory Requirements

Sections 76.125-76.137 of EDGAR. Chapter 2 regulations to the extent an Insular Area is spending its consolidated grant funds for Chapter 2 activities.

Questions and Answers

1. Are the Insular Areas eligible for funding under Chapter 2?

Yes. From the funds appropriated for Chapter 2, the Secretary must reserve not to exceed one percent for payments to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands and the Republic of Palau. These funds are allotted to the Insular Areas in accordance with their respective needs. An Insular Area may spend its Chapter 2 funds for the purposes authorized under Chapter 2 or for any of the other program purposes for which it receives funds under its consolidated grant.

GENERAL EDUCATION PROVISIONS ACT
(GEPA)

Statutory Requirement

Section 1575 of Chapter 2, 20 U.S.C. 2975.

Questions and Answers

1. What is GEPA and does it apply to Chapter 2?

The General Education Provisions Act (GEPA) is a law that contains general requirements that apply to most programs administered by the Department. Section 1575 of Chapter 2 makes the provisions of GEPA apply to Chapter 2 with the exception of the following sections that are superseded by specific provisions of Chapter 2:

- o Section 408(a)(1), authorizing the Secretary to promulgate regulations, is superseded by Section 1574(b)
- o Section 426(a), concerning technical assistance, is superseded by Section 1574(a)
- o Section 427, concerning parental participation, is superseded by 1533(a)(5)
- o Section 430, concerning applications for assistance, is superseded by 1522 and 1533
- o Sections 434, 435, and 436, except for the following sections that relate to fiscal control and fund accounting procedures:
 - o Section 434(a)(2) and (b)(2)-(3).
 - o Section 435(b)(2) and (5).
 - o Section 436(b)(2) and (3).
- o Section 455, concerning withholding of payments, is superseded by Section 1433 of Chapter 1.
- o Section 458, concerning judicial review is superseded by Section 1434 of Chapter 1 with respect to judicial review of withholding of payments.

2. What GEPA provisions apply to Chapter 2?

GEPA provisions that both are legally applicable to Chapter 2 and contain subject matter related to Chapter 2 may be classified in three categories: (1) provisions that impose administrative responsibilities on the Department in administering Chapter 2 but that do not affect the rights or responsibilities of award recipients; (2) provisions that confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients; and (3) provisions that impose requirements or duties on award recipients. In some instances, particular provisions may be deemed to fall under more than one of these categories. However, the following lists attempt to classify the sections according to their predominant characteristics.

GEPA provisions that impose administrative responsibilities on the Department in administering Chapter 2 but that do not affect the rights or responsibilities of award recipients include:

- o Section 400, concerning definitions, applicability, and appropriations
- o Section 408(a)(2)-(6), (b), (c), and (d), concerning administrative authorities of education officials
- o Section 409, concerning education impact statements for regulations affecting institutions of higher education
- o Section 411, concerning advance appropriations for programs
- o Section 413, concerning the availability of appropriations for programs
- o Section 414, concerning contingent extension of program authorizations
- o Section 415, concerning payment methods
- o Section 416, authorizing planning and evaluation by the Secretary
- o Section 417, requiring annual evaluation reports
- o Section 419, concerning program evaluation by the Comptroller General

- o Section 421A, regarding the administration of programs by the Secretary
- o Section 422 and 426(d), concerning collection and dissemination of information and an annual report
- o Section 423, concerning a catalog of Federal education assistance programs
- o Section 428, concerning use of funds withheld for failure of an LEA to comply with Title VI of the Civil Rights Act of 1964
- o Section 429, authorizing the Secretary to furnish information to the public
- o Section 431, concerning the issuance of regulations by the Secretary

GEPA provisions that specifically confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients include:

- o Section 400A, concerning paperwork control
- o Section 425, concerning appeal procedures at the State and Federal levels available to an LEA that has been adversely affected by a decision of its SEA
- o Section 426(b), concerning use by LEAs of systematic cost allocation methods
- o Section 432, prohibiting Federal control of education
- o Section 440(a), limiting Federal authority to terminate or suspend funds for refusals to provide personally identifiable data
- o Section 440(b), providing due process procedures for sanctions under nondiscrimination provisions of Federal law
- o Section 440(c), prohibiting the imposition of quotas
- o Section 451, concerning the Office of Administrative Law Judges

- o Section 452, concerning recovery of funds
- o Section 453, concerning the measure of recovery
- o Section 454, concerning remedies for existing violations
- o Section 456, concerning cease and desist orders
- o Section 457, concerning compliance agreements
- o Section 458, concerning judicial review of certain determinations (except with regard to withholding actions)
- o Section 459, authorizing use of recovered funds
- o Section 460, concerning definitions

GEPA provisions that impose requirements or duties on award recipients include:

- o Section 406A, which imposes responsibilities on States to furnish information
- o Section 412, concerning the period of availability of appropriated funds
- o Section 420, prohibiting use of appropriated funds for busing
- o Section 433, concerning application of the Davis-Bacon Act regarding wages in construction and minor remodeling projects
- o Section 434(a)(2) and (b)(2)-(3), 435(b)(2) and (b)(5), and 436(b)(2) and (b)(3), concerning fiscal control and fund accounting procedures
- o Section 437(a), concerning records
- o Section 437(b), authorizing the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance
- o Section 438, concerning the privacy and related rights of parents and students regarding student records

- o Section 439(a), concerning the availability for parental inspection of instructional material used in research or experimentation programs
- o Section 439(b), forbidding requirements that students submit to psychiatric or psychological testing or treatment designed to elicit particular information

3. Are there other sections of GEPA that technically are applicable to Chapter 2 but that by their own terms concern subject matter that is unrelated to Chapter 2?

A number of GEPA provisions are unrelated to Chapter 2. These include, for example, provisions concerning internal Department organization that have been superseded by the Department of Education Organization Act, authorizations of other agencies and programs, such as the authorizations for the National Institute of Education and the National Center for Education Statistics, and provisions concerning Federal advisory councils.

The GEPA provisions unrelated to Chapter 2 are:

- o Section 401, 402, and 403 concerning the previous Education Division of the Department of Health, Education, and Welfare and its officers and units
- o Section 405, concerning the National Institute of Education
- o Section 406, concerning the National Center for Education Statistics
- o Sections 406B and 406C, authorizing appropriations for science education programs and science improvement programs, respectively
- o Section 407, concerning rules for education officers of the United States
- o Section 421, concerning the applicability of Part C of GEPA
- o Section 424, concerning a compilation of assisted innovative projects
- o Section 426(c), concerning awards for curriculum development

- o Section 426A, concerning equalization assistance
- o Sections 441-449, concerning advisory councils

4. What is the difference between GEPA and EDGAR?

GEPA is a law. EDGAR is a set of administrative regulations.

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS
(EDGAR)

Regulatory Requirement

Section 298.2(a) of the Chapter 2 regulations makes applicable the following provisions of EDGAR:

- o 34 CFR Part 76 (State-Administered Programs) as follows:
 - Subpart A (General), except for Section 76.3 (ED general grant regulations apply to these programs).
 - Sections 76.125-76.137 (Consolidated Grant Applications for Insular Areas).
 - Section 76.401 (Disapproval of an application--opportunity for a hearing).
 - Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?) as follows:
 - (1) Section 76.500 (Federal statutes and regulations on nondiscrimination).
 - (2) Section 76.532 (Use of funds for religion prohibited).
 - (3) Section 76.533 (Acquisition of real property; construction).
 - (4) Section 76.534 (Use of tuition and fees restricted).
 - (5) Section 76.563 (Restricted indirect cost rate--programs covered).
 - (6) Section 76.592 (Federal evaluation--satisfying requirement for State or subgrantee evaluation).
 - (7) 34 CFR 75.601-75.602, 75.609-75.611, 75.613, and 75.616 concerning construction authorized under Section 298.37(b), incorporated by reference in Section 76.600.
 - (8) Sections 76.670-76.677 (Procedures for Bypass).
 - (9) Section 76.682 (Treatment of animals).

-- Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?) as follows:

- (1) Section 76.703 (When a State may begin to obligate funds).
- (2) Section 76.704 (When certain subgrantees may begin to obligate funds).
- (3) Section 76.705 (Funds may be obligated during a "carryover period").
- (4) Section 76.706 (Obligations made during a carryover period are subject to current statutes, regulations, and applications).
- (5) Section 76.707 (When obligations are made).
- (6) Section 76.730 (Records related to grant funds).
- (7) Section 76.734 (Record retention period).
- (8) Section 76.740 (Protection of and accessibility to student records).
- (9) Section 76.760 (More than one program may assist a single activity).
- (10) Section 76.783 (State educational agency action--subgrantee's opportunity for a hearing).

-- Section 76.901 (Education Appeal Board).

- o 34 CFR Part 77 (Definitions that Apply to Department Regulations).
- o 34 CFR Part 78 (Education Appeal Board).
- o 34 CFR Part 81 (General Education Provisions Act--Enforcement).
- o 34 CFR Part 82 (New Restrictions on Lobbying).

- o 34 CFR Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
- o 34 CFR Part 86 (Drug-Free Schools and Campuses).

Questions and Answers

1. What enforcement procedures apply to the Chapter 2 program?

Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board (EAB) and sets out new hearing procedures. 20 U.S.C. 1234-1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, (made applicable to Chapter 2 by Section 1574(d) of Chapter 2), Part E applies to the Chapter 2 program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 25, 1988, as well as most other enforcement proceedings under the Chapter 2 program, will be heard by the OALJ. The regulations in 34 CFR Part 81 contain general procedural rules for proceedings before the OALJ and specific rules for OALJ hearings for the recovery of funds. Future proposed regulations implementing Part E will address whether withholding actions under the Chapter 2 program will also be heard by the OALJ. The EAB will continue to hear appeals from determinations under the Chapter 2 program received by an SEA before October 25.

2. Do governmentwide debarment and suspension (nonprocurement) requirements and governmentwide requirements for a drug-free workplace apply to Chapter 2?

Yes. Part 85 of EDGAR, which implements Executive Order 12549 in Subparts A-E and the Drug-Free Workplace Act of 1988 in Subpart F, applies to Chapter 2.

The regular debarment and suspension regulations provide that statutory entitlement and mandatory awards (but not sub-tier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the

Secretary from denying funding under Chapter 2 or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under Chapter 2 or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower-tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.100(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal government.

As a result, if the Department discovers any activity by an administrator of Chapter 2 that would constitute grounds for debarment, the debarring official for the Department would take action to debar the individual. Further, if a State continues to do business with the individual and pays for the individual's services with Chapter 2 funds, the Department would consider issuing a program determination letter to the State to recover the Chapter 2 funds. Accordingly, each State must submit to the Department a primary-tier certification that its principals have not been debarred or suspended. Similarly, each State must collect lower-tier certifications from its subgrantees, including LEAs receiving Chapter 2 funds, indicating that this principals have not been debarred or suspended.

Under the drug-free workplace requirements in Subpart F, all grantees receiving a grant from any Federal agency must certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs such as Chapter 2 to grantees that fail to meet the drug-free workplace requirements. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

3. Do the Drug-Free Schools and Campuses Regulations apply to Chapter 2?

Part 86 of EDGAR contains the Drug-Free Schools and Campuses Regulations, which implement Section 22 of the Drug-Free Schools and Communities Act Amendments of 1989. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education, SEA, or LEA must certify that it has adapted and implemented a drug prevention program designed to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities. Each SEA must submit its drug prevention program certification to the Secretary. Each SEA must also develop a certification form and a schedule for submission to the SEA of the certification by each LEA within its jurisdiction. Each SEA must provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications to the SEA. If an SEA or LEA fails to submit a drug prevention program certification, it is not eligible to receive funds or any other form of financial assistance under any Federal program.

4. May Chapter 2 funds be used for lobbying?

Section 82.100 of EDGAR provides that no appropriated Federal funds may be expended for influencing or attempting to influence an officer of any agency, a Member of Congress, or an employee of a Member of Congress.

Further, Section 82.110 of EDGAR requires that an applicant submit a certification regarding lobbying and disclosure form for each request for Federal funds.



APPENDIX V



ESEA **Chapter 2**

Elementary & Secondary Education Act

Sample Consultation Policy



SAMPLE

CHAPTER 2 CONSULTATION POLICY

It is the policy of [name of school district] to consult with parents, teachers, administrative personnel, and others who may be involved in the implementation of a Chapter 2 program (such as librarians, counselors, etc.) on an annual basis. Such consultation shall be for the purpose of assessing the school district's priority needs, and for designing a program, using Chapter 2 funds, that will best meet those needs.

If, in any year, a change in circumstances or priorities requires a budget amendment, consultation will again be sought to verify the necessity of such a change.

In order to document the consultation process, the Chapter 2 authorized representative will write a summary of the process. This summary will include the date of the meeting(s), names and titles of those consulted, a description of the needs identified, and comments or suggestions for programs or purchases considered to be an effective strategy for meeting the identified needs. This summary shall be in writing, and shall be placed in the Chapter 2 file for the appropriate school year.

APPENDIX VI



Elementary & Secondary Education Act

Procedures for Combining School District Funds

**PROCEDURES FOR COMBINING SCHOOL DISTRICT FUNDS
ESEA, CHAPTER 2**

The following procedures should be followed by the Office of Public Instruction, by host districts, and by participating districts in the event a school district receives the allocation of one or more participating districts in a group project or consortium.

1. Prior to the submission of applications, the host district will inform the Chapter 2 specialist of the names of the districts (both elementary and high school) which will assign their allocation to the host district.
2. OPI will adjust the accounting program to permit entries designating a district as a host district, and other districts as participants not receiving funds.
3. Accompanying the host district's application will be a letter of agreement signed by an authorized representative of each district (indicating elementary and/or high school) assigning their allocation to the host district.
4. Each district which assigns funds to a host district is responsible for submitting a project application for approval by OPI. A cover letter or a notation on the application explaining that funds are to go to another (host) district would ensure that the application is handled properly by OPI. A district which does not receive funds is still responsible for submitting the annual performance report at the end of the project year, but is not responsible for submitting a final cash disbursement report.
5. At the end of the project year, the host district is responsible for submitting a final cash disbursement form for the Chapter 2 funds expended for itself, and on behalf of all districts which had assigned funds to it as host district. The host district is responsible only for its own annual performance report.

APPENDIX VII

ESEA **Chapter 2**

Elementary & Secondary Education Act

State Adoption of Fiscal and Administrative Requirements

The Office of Public Instruction

Nancy Keenan
Superintendent



State Capitol
Helena, Montana 59620
(406) 444-3095

Formal Adoption of Fiscal and Administrative Requirements for Montana's ESEA Chapter 2 Program as Required by P.L. 100-297

The Montana Office of Public Instruction adopts the following provisions of the Education Department Administrative Regulations (EDGAR): 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and Sections 75.603-75.608, 75.612, and 75.614-76.615, 34 CFR (concerning construction).

Adopting these regulations satisfies the requirement in the ESEA Chapter 2 final regulations of April 18, 1990, 298.2 (b)(1) that a State shall formally adopt fiscal and administrative requirements for expending and accounting for all Chapter 2 funds received by this SEA and LEAs of Montana.

As State Superintendent, I issue this statement on behalf of the Montana Office of Public Instruction.

Nancy Keenan
Nancy Keenan, State Superintendent

3-25-92
Date

APPENDIX VIII



Elementary & Secondary Education Act

Current Allocation Formula

APPENDIX VIII - LEA ALLOCATION FORMULA MAY, 1992

Distribution Criteria

Enrollment and additional components for high-cost students, together with their recommended pupil weighting factors, are as follows:

Student Measure, N	Weight, W
Enrollment (N_1)	1.0 (W_1)
Low Income (N_2)	2.0 (W_2)
Sparsity (N_3)	0.5 (W_3)

The allocation for any LEA is:

$$\text{Allocation} = A * (W_1 N_1 + W_2 N_2 + W_3 N_3)$$

where A is the dollar amount per weighted pupil adjusted to allocate all funds (the allocation plus carry-over) available for flow-through.

The factors in the formula are defined as follows:

A. Enrollment

Enrollment is based on the prior year October 1 count.

B. Low Income

Eligible LEAs are those having at least 5 percent low-income students who qualify for Aid to Families with Dependent Children (AFDC) as reported by the Montana Department of Social and Rehabilitation Services for the prior year.

C. Sparsity

Eligible LEAs are those designated as rural by U. S. Census categories and whose total prior year enrollment, including private school students, is less than 60 in the high school grades and less than 120 in the elementary grades. The student measure for this factor is computed as the difference between actual enrollment in "rural" districts and 60 for high school grades or 120 for elementary grades.

(Note: "Prior year" refers to the year preceding the allocation year.)

Allocations for nonpublic schools choosing to receive Chapter 2 services will be the same per-pupil amount as the host district.

Approximately 20 percent of the LEA allocation is adjusted for high cost using the above formula.

APPENDIX IX

ESEA **Chapter 2**

Elementary & Secondary Education Act

Chapter 2 Forms

SEPARATE REPORT MUST BE USED FOR PUBLIC AND NONPUBLIC SCHOOLS.

YOU NEED ONLY REPORT EACH DISBURSEMENT ONCE DURING THE YEAR.

REMINDER: All books, non-consumable instructional materials and equipment must be inventoried and marked "Chapter 2."



Nancy Keenan, Superintendent
Office of Public Instruction
State Capitol
Helena, MT 59620

ESEA CHAPTER 2 QUARTERLY REQUEST FOR FEDERAL FUNDS
Disbursements and Estimated
Requirements for Federal Funds

DIRECTIONS:

1. Complete two copies of this report. Send original to the Office of Public Instruction and retain the copy for your files.
2. Submit only one request for funds per fiscal calendar quarter.
3. Request for funds should be based on current obligations and/or projected expenditures for the time of request.
4. The report must be signed by the authorized representative.

District Name	District No.	☐ Elem.	☐ H.S.
Legal Entity	County	Chapter 2 Project Number	

Disbursements for Quarter: ☐ Jul-Sept ☐ Oct-Dec ☐ Jan-Mar ☐ Apr-June School Year _____

Sum of disbursements of federal cash reported, all quarters prior to this one \$ _____

Disbursements of federal cash, this quarter only \$ _____

Federal cash on hand at end of the quarter \$ _____

Total federal cash accounted for (add lines 1 + 2 + 3); must equal total funds received for this project through the end of this quarter \$ _____

Requirements for Quarter: ☐ Jul-Sept ☐ Oct-Dec ☐ Jan-Mar ☐ Apr-June School Year _____

First month _____, anticipated cash disbursements \$ _____

Second month _____, anticipated cash disbursements \$ _____

Third month _____, anticipated cash disbursements \$ _____

Total requirements for quarter (add lines 5 + 6 + 7) \$ _____

Federal cash on hand at end of preceding quarter (from line 3) \$ _____

Net amount of federal cash required (line 8 minus line 9) \$ _____

REMINDER: ALL MATERIALS AND EQUIPMENT MUST BE INVENTORIED AND MARKED "CHAPTER 2."

REQUIRED FOR RELEASE OF FUNDS

How do you plan to use the requested funds this quarter?

CERTIFICATION: This report is true and complete to the best of my knowledge and belief.

Signature of Authorized Representative:	Date
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REQUIRED ONLY IF THERE IS A CHANGE IN AUTHORIZED REPRESENTATIVE

The above-named Authorized Representative replaces _____
who previously acted as Authorized Representative.

Signature, Board of Trustees Chair	Date
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REQUEST FOR BUDGET AMENDMENT
ESEA CHAPTER 2

DIRECTIONS:

A budget amendment is required for:

- a change of 10% or more among program categories.
- any amount of money moved to a new program category.
- a change in purchases or activities which do not change the dollar amount budgeted but change the original plan.

Be sure that this amendment has complied with the guidelines of the Statement of Assurances (originally signed at the time of application).

Submit an original request to the Office of Public Instruction; retain a copy for your files.

This request must be signed by the authorized representative.

Each section must be completely filled out before approval will be granted.

PART I.

District Name _____ County _____ ☐ Elem. ☐ H.S.	LE: _____	Project Number _____ Budget ID# From Budget Page _____
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PART II.

No.	Program Code	Percent Allocation	
		Current	Requested
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

PART III.—Amended Plan A

- Identify the needs of your students to be addressed by this program.
- Describe how you plan to use the funds (include activities and items to be purchased).
- Describe how the program will improve student achievement or the quality of education for students (Be specific).

USE REVERSE SIDE IF MORE THAN ONE PROGRAM CATEGORY IS CHANGED

Signature, Authorized Representative	Date
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ART III.—Amended Plan B

- Identify the needs of your students to be addressed by this program.
- Describe how you plan to use the funds (include activities and items to be purchased).
- Describe how the program will improve student achievement or the quality of education for students (Be specific).

ART III.—Amended Plan C

- Identify the needs of your students to be addressed by this program.
- Describe how you plan to use the funds (include activities and items to be purchased).
- Describe how the program will improve student achievement or the quality of education for students (Be specific).

EXPENDITURE ACCOUNT CODES

ESEA CHAPTER 2

and below are basic accounting codes from the **Accounting and Reporting System Design Manual** which
 to be used in ESEA Chapter 2 budgeting and reporting. Account codes that do not appear on this
 ing must be discussed with your accounting specialist so uniform budgeting and accounting can be
 obtained. Each fund number must be used exactly as shown. See page (4) for nonpublic schools.

level and fund	program	function	object
x23	289	xxxx	xxx

1 123 = elementary Chapter 2
 1 223 = high school Chapter 2
 1 523 = non-public Chapter 2

INSTRUCTIONAL SERVICES

3 89-1000-112	Professional-Educational Salaries. Teachers' Salaries and prorated salaries for certified teaching personnel.
3 89-1000-117	Teachers' Aides. Salaries and prorated salaries for instructional aides and tutors.
3 89-1000-120	Temporary Salaries. Salaries and prorated salaries of personnel substituting for teaching staff during Chapter 2 teacher activities.
3 89-1000-150	Professional-Educational Stipends. Additional salary to teaching staff for additional duties related to a Chapter 2 program.
3 89-1000-320	Professional/Educational Services. Services in support of the instructional program such as contracted instructional services.
3 89-1000-321	Distance Learning Professional/Educational Services. Services in support of the distance learning program.
3 89-1000-351	Contracted Services With Other Districts. Includes contracts for services such as specialists, consultants, or instructional services from cooperatives rather than private contractors to school districts.
3 89-1000-440	Repair and maintenance services not provided by school district personnel. This category is specifically for instructional items purchased with Chapter 2 funds.
3 89-1000-452	Equipment Rental. Expenditures for the rental and/or lease of equipment to be used in a Chapter 2 instructional program.

- 289-1000-516 Instructional transportation services for Chapter 2. Transporting students on instructional field trips.
- 289-1000-530 Communications. If computer is modular, and is for instructional use only. Distance learning.
- 289-1000-531 Communications Services. This category includes telephone, telegraph, and rental of telephone lines directly related to the Chapter 2 program.
- 289-1000-581 Instructional Travel. Expenditures for mileage or transportation associated with staff travel within the school district in connection with Chapter 2 activities.
- 289-1000-610 Supplies. Expenditures for all instructional supplies used in a Chapter 2 program. This would include instructional materials and manipulative devices.
- 289-1000-615 Replacement supplies and parts. Replacement supplies and parts used by district personnel to repair and maintain instructional equipment purchased with Chapter 2 funds.
- 289-1000-640 Supplementary classroom books. Expenditures for **SUPPLEMENTARY TEXTBOOKS**, including shipping and handling.
- 289-1000-660 Minor Equipment for Instruction-New. Expenditures for new equipment with a cost of less than \$300.
- 289-1000-681 Computer Software. Expenditures for computer software for instructional use.
- 289-1000-682 Media Software. Expenditures for media software for instructional use. Media software includes videos, filmstrips, cassettes, records, games, study prints, manipulative devices, laser disks, compact disks, slides, 16mm films, and material kits.
- 289-1000-730 Major Equipment for Instruction-New. Expenditures for initial purchase of equipment (not built-in) costing **\$300** or more that will be used in the teaching-learning process in a Chapter 2 program. This includes Computer Hardware, printers, modems, satellite dishes, VCRs and T.V. sets.

SUPPORTIVE SERVICES - STUDENTS

- 289-2100-112 Professional - Educational Salaries. Teachers' Salaries and prorated salaries for certified teaching personnel.
- 289-2113-320 Professional/Educational Services. This would include counseling and guidance services designed to meet the needs of "students at risk" and other Chapter 2 programs.

SUPPORTIVE SERVICES-INSTRUCTIONAL STAFF

- 39-2213-320 Consultant Fees. Fees for outside consultative services employed in connection with the Chapter 2 instructional program.

-289-2213-582 Inservice Training related to Chapter 2 activities, including registration, travel and per diem.

-289-2213-610 Inservice Training Supplies. This could include shipping and handling.

SUPPORTIVE SERVICES-LIBRARY/MEDIA

-289-2225-113 Professional/Other Certified Staff. Salaries and prorated salaries for supplementary certified librarians and assistant librarians.

-289-2225-117 Librarian Aide Salaries. Salaries and prorated portion salaries for librarian aides.

-289-2220-320 Professional/Educational Services. Services in support of the instructional program. Included would be library and media support which includes film rentals, user fees and telephone charges for electronic data.

-289-2225-610 Supplies. Expenditures for library supplies including shipping and handling.

-289-2225-640 Books. Expenditures for supplementary resource materials including freight for placement in school libraries. Does not include encyclopedias or textbooks.

-289-2225-650 Periodicals. Expenditures for supplementary periodicals and newspapers.

-289-2225-660 Minor Equipment-New. Expenditures for new library equipment costing less than \$300.

-289-2225-681 Computer Software. Expenditures for computer software used for library resource purposes.

-289-2220-682 Media Software. Expenditures for supplementary media software including videos, filmstrips, records, games, study prints, manipulative, laser disks, compact disks, slides, 16mm films and material kits. This does NOT include equipment.

PERSONAL SERVICES-EMPLOYEE BENEFITS

-289-9999-210 Social Security

-289-9999-220 Teachers' Retirement System

-289-9999-230 Public Employees' Retirement System

-289-9999-240 Unemployment Compensation

-289-9999-250 Workers' Compensation

-289-9999-260 Health Insurance

-289-9999-270 Life and Disability Insurance

PRIVATE, NONPUBLIC SCHOOLS

Please note that the program code used for private, nonprofit schools is 500 instead of 289. Expenditures for nonpublic schools may include any of the previous codes that are appropriate. Following are codes for expenditures that are the most common for nonpublic schools.

3-500-1000-610	Instructional Supplies
3-500-1000-640	Supplementary Classroom Books
3-500-1000-660	Minor Equipment
3-500-1000-734	Equipment for Instruction
3-500-2220-582	Inservice Training
3-500-2220-600	Library Resource Materials

APPENDIX X



Elementary & Secondary Education Act

Disclosure of Federal Funding in Public Announcements

DISCLOSURE OF FEDERAL FUNDING IN PUBLIC ANNOUNCEMENTS

On February 20, 1991, the United States Department of Education issued the following announcement:

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing this project, the recipient shall state clearly: 1) the dollar amount of Federal funds for the project, 2) the percentage of the total cost of the project that will be financed with Federal funds, and 3) the percentage and dollar amount of the total cost of the project that will be financed by nongovernmental sources.

Section 511 of the 1991 Department
of Education Appropriations Act



